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THE
REVISED STATUTES
OF THE
STATE OF MICHIGAN,

PASSED AND APPROVED MAY 18, 1846.

Michigan Laws, 1846, etc.

Printed and published in pursuance of an Act of the Legislature, approved May 18, 1846, under
the superintendence of

SANFORD M. GREEN.



DETROIT:
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ADVERTISEMENT.

During the session of the legislature which commenced on the first Monday of January, in the year 1844, the attention of that body was directed to the condition of the general laws of the state, and an inquiry was instituted into the propriety of their revision and consolidation. The former revision had been amended and modified by successive legislatures, until scarcely a single chapter remained as originally passed, and the numerous general statutes enacted in addition to, or amendatory of the revised statutes, had undergone so many mutations as to produce that state of confusion and uncertainty in the laws, which is always a most fruitful source of vexation and ruinous litigation. These considerations, with other cogent reasons, which were set forth in the report of the committee to whom the subject was referred, induced the legislature to provide for a revision and consolidation of the general laws of the state.

In pursuance of the act to provide for consolidating and revising the general laws of the state of Michigan, approved March 2, 1844, and the act amendatory thereof, approved March 12, 1844, the undersigned was, on the 13th of that month, appointed ~~law~~ ^{reviser}, a commissioner, to prepare the revision therein provided for. The work was completed and reported to the legislature, printed in bill form, with marginal notes and references, at its annual session in 1846, during which it was acted upon and passed as one entire act, with such alterations as the legislature thought proper to make, and was approved by the governor on the 18th day of May.

In pursuance of the act to provide for the publication of the revised statutes (published on page 759 of this volume) the undersigned was, on the 19th of May last, appointed by the governor, a commissioner, to superintend the publication of the revised statutes, together with the other matter specified in said act, and to prepare marginal notes to the sections, and an exact and copious index to the whole. This volume is now published in pursuance of that commission, and is the result of the enactments and labors above mentioned.

The rapidity with which this work has progressed from its first inception to its final publication, occupying in all only about two years and nine months, when considered in connexion with the indispensable labor of examining and fully and deliberately investigating the reasons of every provision, whether new or old, proposed to be incorporated into it, with reference not only to its probable, but also to its possible effect, will afford an apology for any defects or imperfections which may be found to exist in it.

The several parts of the report of the revisor were referred to committees as they were reported; but a considerable portion of it was taken up and acted upon, before those committees were prepared to report it back. During the progress of the revision through the forms of legislation, from its first reading to its final passage, the legislature was also occupied with the other business of the session, including several matters of great importance, and absorbing interest. This state of things, so unfavorable to the perfection of the details of a code of laws intended to be permanent, has resulted in producing several incongruities and discrepancies, which it will require future legislation to harmonize and correct.

The following note indicates the principal alterations which were made by the legislature to the revisor's report, and is inserted as a matter of justice between the revisor and the legislature, that the labors of the one may not be credited or charged to the other; and also, as being calculated to afford some aid in determining the objects and intentions of the legislature, in cases where embarrassing doubts might otherwise arise as to the true meaning and intent of the makers of the law.

Where words have been found in the enrolled copy which were evidently superfluous, they have been printed in italics. Where one word has evidently been mistaken for another, the mistaken word has been retained, and the word supposed to have been intended has been inserted immediately after it, in italics, and in parenthesis; and when a word has been found necessary to sustain the sense of the context, it has been supplied, and enclosed within brackets. References have been made in the margin to the session laws, upon the same subjects treated of in the revised statutes, under the proper head; but the former revised statutes, having been made the principal basis of the new revision, are not so referred to. Numerous adjudicated cases have been referred to, arising under similar provisions of statutes in other states, and some few cases decided in the supreme court of this state, although at the time this volume was printed, no reports of decisions in that court had yet been published.

SANFORD M. GREEN.

DECEMBER, 1846.

NOTE.

CHAPTER 1. Sec. 10, as reported, provided for the payment of the expense of the notice of reception, and of the transportation of the laws, by the county.

Sec. 11 contained a provision, requiring the secretary of state to publish a notice for three weeks in the state paper, when the laws were ready for distribution, which was struck out.

CHAP. 2 contained three sections, providing for giving notice of applications to be made to the legislature for acts of incorporation, &c., which were stricken out.

CHAP. 3. Sec. 2, was so altered as to provide for the election of county judges, instead of associate judges.

CHAP. 5 was amended so as to reduce the board of inspectors from four to three, and so as to require but one ballot box to be kept, and one ballot to be voted at the general election. That chapter also contained the substance of the law of 1841 (p. 185) for preserving the purity of elections, requiring the inspectors to interrogate persons challenged, on oath, in regard to their qualifications, which was struck out.

CHAP. 7. Sec. 10, as reported, which required the canvassers to publish their determination in a newspaper, was struck out.

CHAP. 12. Sec. 1, provided for a salary of two thousand dollars a year to the governor, which was reduced to fifteen hundred.

Sec. 3, provided for the appointment of an assistant librarian during the sessions of the legislature, and that the pay of the librarian and private secretary to the governor should not exceed three dollars a day.

Sec. 6, provided a salary of one thousand dollars a year for the secretary of state, which was reduced to eight hundred.

Sec. 25, provided a salary of \$1500 a year for the auditor general, which was reduced to \$1000.

Sec. 27, provided for the appointment of three regular clerks, and that the extra clerks should receive not exceeding five hundred dollars a year. Eight hundred dollars a year was the salary provided by that chapter for the attorney general.

CHAP. 14. The proviso in section 24, was added by the legislature. Sec. 49, was altered so as to provide for the election of a county judge, and second judge, instead of associate judges, and other corresponding alterations were made in the same chapter. In section 70, line one, after the word *appoint*, the words *one or more* were stricken out, and *four* inserted.

CHAP. 16. Sec. 8 provided for the election of two assessors, without any condition, and three commissioners of highways. Sec. 12, was added by the legislature. Sec. 80, as reported, required the attendance of constables at elections and township meetings, but was struck out. Sec. 85 was amended by adding the provision requiring accounts of township officers to be verified by affidavit in all cases, and so as to reduce their compensation from one dollar and twenty-five cents a day, to one dollar.

CHAP. 17 was amended so as to substitute the township boards in the place of the supervisors and directors of the poor, to make a settlement on the division of a township.

CHAP. 18. In sec. 22, *shall* was stricken out after township in the first line, and *may* inserted. Sections 23 and 24, as reported, were struck out.

CHAP. 20. Sec. 129, was added by the legislature.

CHAP. 21, was so altered as to increase the tax on banks from one, to one and one half per cent. and to reduce the tax on rail road, canal, and turnpike stock, from one to three-fourths of one per cent. and also, to reduce the tax on brokers and exchange dealers, from two and a half, to one and a half per cent. This chapter also contained provisions for taxing distillers of ardent spirits, one hundred and fifty dollars a year, which were struck out.

CHAP. 22. Five entire sections were struck out of this chapter, and other essential alterations made therein.

CHAP. 24. Sec. 16, as reported, required the supervisor to lay the lists returned to him by the overseers, before the board of supervisors, and that the board should cause the arrearages of labor, at the rate of eighty cents a day, to be levied on the lands returned. Sec. 16, as it now stands was substituted therefor.

CHAP. 25, as reported, contained provisions for laying out private roads, which were struck out; and the system of laying out public roads, and assessing the damages, as reported in that chapter, was very much changed by the legislature. This chapter as reported, also provided for an appeal from the determination of the commissioners of highways, to the judge of probate and associate judges of the county, which provisions were so altered as to authorize an appeal to the township board of the township.

CHAP. 26. Sec. 12, as reported, was stricken out, and sec. 12, as it now stands substituted, and several other important alterations were made in the same chapter.

CHAP. 29, as reported, provided for licensing ferries by the associate judges and judge of probate of each county, and the board of supervisors was substituted for the judges.

CHAP. 30, as reported, was nearly the same as the corresponding chapter of the former revised statutes, and was revised by the legislature.

CHAP. 31. Sec. 14, as reported imposed a forfeiture of twenty dollars upon every person refusing or neglecting to have his weights and measures tried and sealed as required by that chapter, but this section was struck out. Sec. 18 was amended by adding clover seed, dried apples and dried peaches to the other articles enumerated therein.

CHAP. 34. Sec. 3, as reported, authorized parties to stipulate for the payment of ten per cent. interest, only in cases of money loaned, but the restriction was struck out.

CHAP. 36, as reported contained provisions prohibiting the practice of physic or surgery by persons not authorized as therein required, and rendering them incapable of collecting charges incur-

red by such practice, which provisions were struck out. Sec. 37, of the same chapter was added by the legislature.

CHAP. 40. Sec. 2, which contained provisions requiring magistrates, &c. to endeavor to prevent unlawful racing, was struck out.

CHAP. 41. Sec's. 29, 30, 31 and 32, were added by the legislature. Sec's 31 and 32, which provide the mode of collecting penalties for violations of that chapter, and for the application of the proceeds thereof, appear to be in conflict with the provisions of chapter 128, and it may perhaps be difficult to perceive why any such special provisions were deemed to be necessary, as applicable to penalties incurred under the provisions of this chapter.

CHAP. 42. Sec. 11, as reported, which contained provisions for compelling the mother of a bastard child to appear and testify, in cases where such child is chargeable, or likely to become chargeable to the county for support, was struck out by the legislature.

CHAP. 55. Sec. 25, was substituted by the legislature for the last section of that chapter, as reported by the reviser.

CHAP. 57, as reported, provided for continuing the support of the university heretofore established, and the succession of the regents, &c., which was entirely stricken out, and the chapter contained in the former revision, entitled "of the university and its branches," providing for the original organization of a university, the appointment of a board of regents, and their classification at their first meeting, the erection of university buildings, and the procuring of a plan therefor, &c., was adopted entire in the place thereof.

CHAP. 58. In sec. 15, all after the word *meeting*, in line three was added by the legislature. Secs. 22, 23, 59, 77, 78, 86, 87, 95 and 107, of the same chapter, were also materially altered, and sec's 121 and 141, as reported, were struck out, and the last section of that chapter was added, and the word *five* wherever it occurred in the chapter in reference to the ages of scholars, was struck out, and *four* inserted in its place.

CHAP. 60. The proviso contained in section 22 was added by the legislature. This chapter, as reported, was also amended so as to reduce the price of the primary school and salt spring lands from *five* to *four* dollars per acre, and the price of state building lands from *twelve* to *eight* dollars per acre, and so as to change the time for the payment of interest on the purchase of university and primary school lands, from the first day of *March*, to the first day of *January*, in each year. Sec. 52, was added, and sec. 59, as reported, was struck out. Sec's. 68, 69 and 71, were also materially amended.

CHAP. 61, as reported, contained 50 sections, and was a consolidation and revision of the laws in force regulating the internal improvements of the state.

CHAP. 63. The fourth clause of section eleven was amended, and the fifth clause added by the legislature.

CHAP. 65. Sec. 7, as reported, provided that "every grant of lands shall be absolutely void, if at the time of the delivery thereof, such lands shall be in the actual possession of a person claiming the same under a title adverse to that of the grantor." This sec., together with sec. 8, was struck out and sec. 7, as it now stands, inserted by the legislature.

CHAP. 66. Sec. 21 was amended by inserting the words *of which her husband died seized*, after the word *state* in line 4. In sec. 23, the words *six months* in the last line were struck out and *one year* inserted; and in sec. 30, line 2, between the words *lands* and *the*, the words *and shall have issue born alive which might inherit the same*, were struck out.

CHAP. 67, as reported, was amended by giving the widow a life estate in the real property of the husband, in default of issue.

CHAP. 68. Sec. 1, as reported, was amended by adding thereto all after the word *debts*, in line 7, sec. 7 was amended by substituting *two* in the place of *three*, in line 3.

CHAP. 79. Sec. 9, was amended by adding the provision authorizing the defendant in an execution to direct which parcel of land should be first sold. Sec. 13 was amended by striking out a provision fixing the rate of interest upon redemption, at ten per cent. a year.

CHAP. 81, as reported, contained provisions requiring chattel mortgages to be filed in the office of the register of deeds of the county, which were so modified as to require them to be filed in the township clerk's office.

CHAP. 83. Sec. 1 was amended by substituting *eighteen* in line 2, in the place of *seventeen*, and *sixteen* in line 3, in the place of *fourteen*.

CHAP. 84, as reported, provided for a proceeding for divorce, only by a bill in the court of chancery, and was amended so as to authorize a suit to be instituted by petition, as well as by bill, and so as to authorize suits for divorce to be prosecuted, either in the circuit courts or in the court of chancery. Clause 4, of sec. 6 was also amended by substituting *two* in the place of *five*, before the word *years*. Clause 5, of the same sec. was also amended by inserting the words *or wife* after the word *husband*. Sec. 5 was amended by striking out *three* before *years*, in line 4, and inserting *two*. In the last line of sec. 34, *husband* was struck out after *as*, and *man* inserted.

CHAP. 85. Sec's. 25, 26 and 27 were added by the legislature.

CHAP. 88, as reported, provided for the organization of a supreme court, to consist of five judges with a general original jurisdiction in all cases, except where exclusive jurisdiction was given to other courts. The amendments to this chapter change entirely the organization and character of the court, and are too numerous to be specified.

CHAP. 89, as reported, provided for the organization of a circuit court for each county, to be holden by a justice of the supreme court, for the trial of all issues to be joined in the supreme court, or in any other court, and brought into the supreme court, or such circuit court, to be tried, with original jurisdiction in all criminal cases triable within the county. This chapter was changed in almost all its important features.

CHAP. 90, as reported, provided for the continuance of the court of chancery as heretofore organized, with some modifications intended to render the system more simple and perfect. The legislature amended this chapter, by abolishing the court of chancery, and conferring its jurisdiction upon the several circuit courts, to be exercised within the respective counties, and by numerous modifications in the details of the system.

CHAP. 92, as reported, provided for a continuance of the district courts for the counties of Wayne, Oakland, Washtenaw and Jackson; and was struck out by the legislature; and the chapter entitled "Of the County Courts," incorporated in its place.

CHAP. 93. Sec. 2, as reported, provided that justices should not have cognizance of actions for disturbance of a right of way or other easement, nor of actions of replevin, or for assault and battery, or false imprisonment, actions against executors or administrators as such, nor against corporations; all which provisions were struck out. All after the word *attachment* in line 3 of sec. 10, and also sections 11 and 12, were added by the legislature. Sec. 29 was amended by adding all af-

ter the first period. Sec. 32 was amended by adding the provision relating to an adjournment, and the issuing of a summons; and the next succeeding section was struck out. Sec. 36, relating to proceedings against garnishees, was added by the legislature. Sec. 45, was amended by striking out after the word *verbal* in line two, the words *at the discretion of the party making the same, and inserting in the place thereof the words and shall contain a concise statement of the party's claim or demand, or nature and ground of defence.* Sec. 48, as reported, providing for a judgment of discontinuance where the claims of the parties exceed five hundred dollars, was stricken out. In sec's. 54, 55, 58, 59 and 60, the word *supreme* was stricken out before *court* wherever it occurs, and *county* inserted in lieu thereof. In sec. 75, the proviso was added by way of amendment. Sec. 85, as reported, was amended by adding the provision authorizing the production, in court, of the book containing the account, or any part thereof. Sec. 102, as reported, required the justice to give a transcript of the judgment, without reference to the issuing or return of any execution. Sec. 103 was amended by adding the provisions relating to the making of an affidavit. Secs. 105 and 106, as reported, were struck out. Secs. 131, 132, 133, 134, 135, 136, 137 and 138 were added by the legislature. That portion of this chapter which relates to appeals, was altered in almost every particular. The mode of appeal, as reported, was similar to that prescribed in the former revised statutes, with some modifications and additional details, intended to make it more perfect and simple, Secs. 211, 215 and 216 were added by the legislature.

CHAP. 94, as reported, provided for the organization of courts of special sessions, proscribed their powers and jurisdiction, and mode of proceeding, &c. That chapter was struck out, and chapter 92, as it now stands substituted in its place.

CHAP. 95. In this chapter the word *supreme* was struck out wherever it occurred before the words *court commissioner* and *circuit* was inserted in its place, and numerous other amendments were made for the purpose of harmonizing its provisions with the judicial system, which the legislature adopted.

CHAP. 96. Sec. 15 was amended by substituting *the board of Supervisors* in line 3, in the place of *the associate judges of the circuit court.*

CHAP. 97. Sec. 36, as reported, providing to what offices process should be returned, was stricken out.

CHAP. 99. Sec. 21, as reported, was stricken out.

CHAP. 100. Sec. 5, as reported, was stricken out.

CHAP. 101. Sec. 22, as reported, was stricken out, and secs. 22 and 23 as they stand in that chapter, were added by the legislature.

CHAP. 102. Sec. 102, was added by the legislature, and various other amendments were made in order to conform the provisions of this chapter to the judiciary system adopted.

CHAP. 103. Sec. 1, as reported, required all issues of fact joined in the court of chancery, or in any probate court, and which should be sent to the supreme court for trial, and all issues of fact joined in the supreme court, to be tried at a circuit court in the proper county, unless ordered to be tried at the bar of the supreme court. The amendments made to this section, leave the provisions of section two, which were intended to apply to all cases triable in the circuit courts, as applying only to issues of fact joined in probate courts, while none of the actions specified in section 2, are cognizable by judges of probate. Secs. 3, 6, 7, 65, 66, and 72, as reported, were struck out, and several other alterations were made for the purpose of harmonizing the provisions of the chapter, with other mandatory provisions.

CHAP. 105. Provisions were made in this chapter, as reported, for assessing damages upon a writ of inquiry, where the clerk could not make the assessment, all of which were struck out, and sec. 16 was added.

CHAP. 106, as reported, contained provisions for entering and docketing judgments and making them a lien upon real estate for five years, by filing a transcript of the docket in the register's office of the county where the lands lie, and causing the same to be there entered, and for canceling and discharging judgments, and making the rendition of a new judgment in an action upon a former judgment, an extinguishment of the former judgment, all of which provisions were struck out; while the corresponding provisions in other chapters, assuming that judgments and decrees may constitute a lien on real estate, are retained. Sec's 28 and 46, as reported, were also struck out. Sec. 27, as it now stands, is very much changed from the corresponding section as reported.

CHAP. 107. Secs 10 and 11, as reported, together with other provisions relating to writs of inquiry, were struck out.

CHAP. 108. Secs. 50, 51, 52 and 53, were added by the legislature.

CHAP. 109, as reported, authorized suits to be instituted in the court of chancery by bill, for partition of lands; but was altered by substituting *the circuit court for the county in which the lands lie by bill in equity*, and making other corresponding amendments. Sec. 69 contained a provision, that execution should not issue against the premises of an unknown owner, until after two years from the entry of the decree, which was struck out.

CHAP. 110. In sec. 6, line 2, the words *three times* were struck out, and *double* inserted. Other alterations were made in this chapter, corresponding with preceding amendments.

CHAP. 113. Sec's 17 and 18, as reported, were struck out. These sections provided for assessing damages at a circuit court, in actions relating to real estate.

CHAP. 114. Altered so as to conform to preceding amendments.

CHAP. 115. Altered for the same purpose.

CHAP. 116. Sec. 6, as reported, was amended by adding the words, *and annex thereto an affidavit of the truth of such plea or notice.*

CHAP. 117. Amended in conformity to preceding amendments. All after the word *same* in line 5, sec. 10, was added by the legislature.

CHAP. 118. altered so as to correspond with preceding amendments. Amendments were also made to chapters numbered from 120 to 129, inclusive, for the same purpose.

CHAP. 130. In sec. 2, clause 1, after *that*, the words *the whole amount secured by such mortgage shall have become due and payable, and that*, were struck out, and clause 4 was added by the legislature.

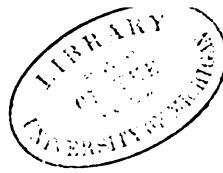
CHAP. 131. Secs 1 and 2 were altered by adding the provisions requiring a determination to be made by the township board, as to whether the public health will be promoted by the draining proposed.

CHAP. 132. Sec. 2 was amended by adding in line 8, the words, *or at some place in the county where the mill is situated.*

CHAPs. 133, 134, 135, 136 and 138, were amended so as to conform to preceding amendments.

CHAP. 140. In sec. 3, line 2, the word *four* was struck out, and *three* inserted after the word *within*, and in sec. 7, line 3, the word *twenty*, before *years*, was struck out, and *ten* inserted.

CHAP. 141 altered in conformity to preceding amendments.



NOTE.

VII

CHAP. 142, sec. 9, as reported, required the officer making the order, to direct notice to be published in newspapers. Sec. 10, as reported, was struck out, and other amendments were made in conformity to preceding amendments.

CHAP. 146. Sec. 1 was amended by striking out, after imprisonment in line 3, the words, *in the cases, and* Sec. 2, as reported was struck out. It was as follows: "Sec. 2. Such application may be made at the times following, that is to say:

1. If the amount due on such executions shall not exceed twenty-five dollars, after he shall have been imprisoned thirty days:

2. If the amount due on such executions be more than twenty-five dollars, and not exceeding fifty dollars, after he shall have been imprisoned sixty days:

3. If the amount due on such executions be more than fifty dollars, and not exceeding one hundred dollars, after he shall have been imprisoned ninety days:

4. If the amount due on such executions be more than one hundred dollars, and not exceeding five hundred dollars, after he shall have been imprisoned six months: and,

5. If the amount due on such executions exceed five hundred dollars, after he shall have been imprisoned nine months." Sec. 3 was amended by striking out *ten* in line 5, and inserting *three*. Sec. 4, as reported, provided for publishing the notice in a newspaper, if one is published in the same county. In the last line of section 4, *ten* was struck out, and *six* inserted before *days*. Other alterations were made in this chapter, in conformity to preceding amendments.

CHAP. 147. The provision in sec. 1, defining the jail limits, was added by the legislature, and is a repetition of sec. 17, chap. 13.

CHAP. 150. Sec. 2, as reported, included provisions prescribing the fees of clerks of the supreme court. The proviso to sec. 2 was added by way of amendment. Sec. 3, as reported, prescribed the fees of attorneys for services in the supreme court, which was struck out, and sec. 3, as it now stands, was added by the legislature. Sec. 4, as reported, prescribed the fees of attorneys in the circuit courts, and was struck out. The proviso to sec. 6 was added by the legislature. Sec. 9, as reported, prescribing the fees of solicitors in chancery, was struck out. The proviso to sec. 8, as it now stands, was added as an amendment. The provisions in sec. 15, prescribing the fees for marrying, &c., and taking acknowledgments, were added as amendments, and are a repetition of similar provisions contained in sec. 7. The last clause of sec. 18, was added as an amendment. Sec. 22, as reported, prescribing the fees of clerks of courts, was struck out. Secs. 19, 20, 21 and 22, as they now stand, were added by the legislature. Several other amendments were made to this chapter, in conformity to preceding amendments.

CHAP. 151. Sec. 2, as reported, prescribing the effect of a former acquittal, was struck out.

CHAP. 152 was altered in conformity with preceding amendments.

CHAP. 153. The word *death*, at the end of sec. 1, as reported, was struck out, and the words, *solitary confinement at hard labor in the state prison for life*, were substituted. In line 3, sec. 4, after the word *state*, the words, *or who shall fight a duel within this state*, were added as an amendment. In sec. 5, line 2, after the word *shall*, the words, *by previous appointment or engagement within the same*, were struck out, and the words, *or in which such wound shall have been inflicted*, were added at the end of the section. In sec. 12, line 1, after the word *intent*, the words *to murder or*, were struck out. In the last line of sec. 13, after the word *prison*, the words *not more than ten years, or by fine not exceeding one thousand dollars, or both, at the discretion of the court*, were struck out, and the words *for life*, inserted. Sec. 14 was added by the legislature, and also the words, *or any number of years*, at the end of sec. 15. In sec. 24, line 2, the word *fourteen*, was struck out before *years*, and *sixteen* substituted. In sec. 25, line 1, the words *willfully and*, were added, and in the last line but one, *five* was struck out and *ten* inserted. In sec. 30, line 6, the word *five* was struck out and *ten* inserted, and in line 7, the words *five hundred* were struck after *exceeding*, and *one thousand* inserted. In the last line of sec. 31, the words *seven years, or in the county jail not more than one year*, were struck out, and *ten years* inserted. Secs. 32, 33 and 34, were added by the legislature.

CHAP. 154. In sec. 3, line 3, the words *railroad depot*, were added, and a similar amendment was made to secs. 12, 13 and 14. Secs. 35, 36 and 37, were added by the legislature.

CHAP. 155. At the end of secs. 3, 4 and 5, respectively, the words, *for life, or any term of years*, were struck out, and the words, *not more than seven years, or in the county jail not more than one year*, were substituted.

CHAP. 158. Secs. 25, 26, 27, 28, 29 and 30, relating to the disturbance of religious meetings, were added by the legislature.

CHAP. 159. In sec. 2, line 3, after the word *drinking*, the words, *with any substance injurious to health*, were struck out; and in sec. 4, line 3, after the word *person*, the words, *which shall endanger the life of such other*, were struck out. In sec. 5, line 3, after the word *poisonous*, the words, *without having the word "poison" written or printed upon a label attached to the phial, box, or parcel in which the same shall be sold, or who shall sell and deliver*, were struck out, and after the word *having*, in line 4, the words, the word "poison" and, were inserted.

CHAP. 162. Altered in conformity to preceding amendments. In sec. 11, after the word *time*, in line 4, the words *not exceeding one year*, were inserted.

CHAP. 163. Amended in conformity with preceding amendments, and so as to except from its provisions, cases cognizable by justices of the peace. In section 19, all after *answer*, in line 3, was added as an amendment. Sec. 21, as reported, authorized the magistrate to take the recognition of a married woman, or minor, in his discretion, which provision was stricken out.

CHAP. 164. In sec. 19, line 1, after the word *jury*, the words, *with the names of the complainant and all the witnesses endorsed on the back thereof*, were inserted as an amendment.

CHAP. 165. In sec. 5, line 2, after the word *death*, the words, *or for murder in the first degree*, were inserted.

CHAP. 166, altered conformably to preceding amendments.

CHAP. 167, as reported, provided for the holding of inquests by a coroner of the county. The proviso to sec. 4 was added as an amendment.

CHAP. 168. Sec. 1 was added by the legislature.

CHAP. 169. Sec. 4, as reported, prescribing the fees of clerks in criminal cases, was struck out. All after the word *expenses*, in sec. 7, line 10, was added as an amendment.

CHAP. 170. In sec. 10, after the word *crime*, in line 5, the words, *or with murder in the first degree* were added, and the same amendment was made in line 2, sec. 11.

CHAP. 171. Sec. 2, as reported, contained an additional provision that during the time of such solitary imprisonment such convict should be fed with bread and water only, unless other food should be necessary for the preservation of his health, which was struck out.

CHAP. 172. Sec. 20, was added by the legislature. Sec. 22 was amended, so as to allow the in-

spectors one dollar and fifty cents a day and traveling fees, instead of two dollars a day as reported. Sec. 50 was amended by adding the words, *and such convicts as cannot read, he shall cause to be instructed in the principles of reading, writing and arithmetic.*

Numerous other amendments were made to the report of the reviser, by the legislature, most of which are of no particular importance; and a large portion of which were made for the purpose of harmonizing the various provisions of the revision, with the important changes which were made in the judiciary system, and a reference to them here would be of no practical utility.

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DECLARATION OF INDEPENDENCE.

[UNANIMOUSLY PASSED BY THE CONGRESS OF THE THIRTEEN UNITED STATES OF AMERICA, JULY 4, 1776.]

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; and that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right—it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain, is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good:

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent

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should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in time of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock-trial, from punishment, for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefit of trial by jury;

For transporting us beyond seas, to be tried for pretended offences;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in

DECLARATION OF INDEPENDENCE.

the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the Representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire.

Josiah Bartlet,
William Whipple,
Matthew Thornton.

Massachusetts Bay.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

Rhode Island.

Stephen Hopkins,
William Ellery.

Maryland.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of
Carrolton.

Virginia.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Carter Braxton.

John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

Delaware.

Cæsar Rodney,
George Read,
Thomas M'Kean.

North Carolina.

William Hooper,
Joseph Hewes,

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Connecticut.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

New York.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

New Jersey.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

Pennsylvania.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,

John Penn.

South Carolina.

Edward Rutledge,
Thomas Heyward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

Georgia.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty, to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

Preamble.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Legislative power.

SECTION II.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

House of representatives and qualifications of electors.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Of representatives.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

Apportionment of representatives; enumeration; ratio of representation; first apportionment.

4. When vacancies happen in the representation from any state, the

Vacancies.

CONSTITUTION OF THE UNITED STATES.

executive authority thereof shall issue writs of election to fill such vacancies.

Speaker of the House.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

Senate; each senator a vote.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senators classed; when seats vacated and filled; vacancies and appointments.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications of senators.

3. No person shall be a senator who shall not have attained to the age of thirty years; and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of the senate.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Officers.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Impeachments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Extent of judgment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

Elections, how regulated.

1. The times, places and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Meetings of congress.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each house to judge of its members; quorum.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

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2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

To determine its own rules.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

To keep and publish journal of proceedings.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation; privilege.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Their disability to hold offices.

SECTION VII.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Revenue bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

President to sign bill, &c.; proceedings on bills returned by president.

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Joint resolutions, except for adjournment to receive the same sanction as bills.

SECTION VIII.

The congress shall have power :

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| Powers of congress to lay taxes | 1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States : |
| Loans. | 2. To borrow money on the credit of the United States : |
| Commerce. | 3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes : |
| Naturalization—bankruptcy. | 4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States : |
| Money. | 5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures : |
| Counterfeiting. | 6. To provide for the punishment of counterfeiting the securities and current coin of the United States : |
| Post offices. | 7. To establish post-offices and post-roads : |
| Science. | 8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries : |
| Tribunals—piracies—felonies. | 9. To constitute tribunals inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations : |
| War. | 10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water : |
| Army. | 11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years : |
| Navy. | 12. To provide and maintain a navy : |
| Land and naval forces. | 13. To make rules for the government and regulation of the land and naval forces : |
| Militia. | 14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions : |
| Disciplining the militia. | 15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress : |
| Exercise exclusive legislation in certain cases. | 16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square,) as may by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings: and, |
| Laws necessary for the execution of their powers. | 17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. |

SECTION IX.

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| Importation of certain persons not to be prohibited until after 1808. | 1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. |
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CONSTITUTION OF THE UNITED STATES.

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2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Writ of habeas corpus.

3. No bill of attainder, or ex-post-facto law, shall be passed.

Attainder.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Direct tax.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another : nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

Of commerce from the states, &c.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

Of expenditures.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state.

No title of nobility to be granted &c.

SECTION X.

1. No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts ; or grant any title of nobility.

Powers prohibited to the individual states.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Powers which the states can exercise only under the sanction of congress.

ARTICLE 2.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows :

Executive power

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of president and vice president.

3. * The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the government

Meeting of the electors ; their proceedings. [* Annulled : see amendments, article 12.]

of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.

Time of choosing electors.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications for president.

6. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of vacancy, vice-president to act.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensation of the president.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath of the president.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION II.

Powers of the president.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

His power to make treaties, to appoint ambassadors, consuls, and other officers

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Power to fill vacancies.

SECTION III.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Duties of president.

SECTION IV.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Officers liable to impeachment.

ARTICLE 3.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Judicial power.

SECTION II.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, [between a state and citizens of another state,] between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Extent of judicial power.

See amendment XI.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Jurisdiction of supreme court.

Trial of crimes.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.—No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare its punishment.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION I.

Credit to be given in each state to the acts of other states.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION II.

Reciprocity of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals to be delivered up.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Persons held to service to be delivered up.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

Admission of new states.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Congress to have power over territory.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

Republican form of government guaranteed to each state.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE 5.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Mode of amending this constitution.

ARTICLE 6.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Assumption of former debts.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges, in every state, shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Constitution to be the supreme law of the land; the state judges bound thereby.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Certain officers to take oath to support this constitution; no religious test.

ARTICLE 7.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

How ratified.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

In Congress, Saturday, Sept. 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative, by the unanimous votes of nine states, viz: of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, South Carolina and Georgia.

Whereas, the convention assembled in Philadelphia, pursuant to the resolution of congress of the 21st February, 1787, did, on the 17th of September, in the same year, report to the United States in congress assembled, a constitution for the people of the United States;

Constitution declared to be ratified.

whereupon, congress, on the 28th of the same September, did resolve unanimously, "That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case;" and whereas, the constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by congress, and are filed in the office of the secretary; therefore,

Government to
go into operation.

Resolved, That the first Wednesday in January next, be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president: and that the first Wednesday in March next, be the time, and the present seat of congress the place for commencing proceedings under the said constitution.

[The following amendments were proposed at the first session of the first congress of the United States, which was begun and held at the city of New York, on the 4th of March, 1789, and were adopted by the requisite number of states.—1 vol. laws of U. S. p. 72.]

[The preamble and resolution following, preceded the original proposition of the amendments, and as they have been supposed by a high equity judge, (8th Wendell's Reports, p. 100,) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first congress.]

Preamble and
resolution which
preceded the original
proposition
of the amend-
ments.

Congress of the United States, begun and held at the city of New York, on Wednesday, the 4th of March, 1789. The conventions of a number of the states having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution,

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, namely:—]

AMENDMENTS.

ARTICLE I.

Restrictions of
the powers of
congress.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

• People may keep
arms.

A well regulated militia being necessary to the security of a free

CONSTITUTION OF THE UNITED STATES.



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state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Search warrants.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Proceedings against persons charged with crimes; their rights.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Rights of the accused.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, &c.

ARTICLE IX.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Construction of constitution.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Reserved powers.

[The following amendment was proposed at the second session of the third Congress. It is printed in the laws of the United States, 1st vol., p. 73, as article 11:]

ARTICLE XI.

Construction of judicial powers. The judicial powers of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed as amendments at the first session of the eighth Congress. They are printed in the laws of the United States as article twelve:]

ARTICLE XII.

Mode of electing president and vice president of the United States; choosing president. 1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed: and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in case of the death or other constitutional disability of the president.

Vice-president. 2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Qualification. 3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

[In the edition of the laws of the United States, before referred to, there is an amendment printed as article thirteen, prohibiting citizens from accepting titles of nobility or honor, or presents, offices, &c. from foreign nations. But by a message of the president of the United States of the 4th of February, 1818, in answer to a resolution of the house of representatives, it appears that this amendment had been ratified only by twelve states, and therefore had not been adopted. See vol. 4 of the printed papers of the 1st session of the 15th congress, No. 76.]

CONSTITUTION OF MICHIGAN.

In convention, begun at the city of Detroit, on the second Monday of May, in the year one thousand eight hundred and thirty-five :

We, the people of the territory of Michigan, as established by the act of congress of the eleventh day of January, in the year one thousand eight hundred and five, in conformity to the fifth article of the ordinance providing for the government of the territory of the United States, north-west of the river Ohio, believing that the time has arrived when our present political condition ought to cease, and the right of self government be asserted; and availing ourselves of that provision of the aforesaid ordinance of the congress of the United States, of the thirteenth day of July, one thousand seven hundred and eighty-seven, and the acts of congress passed in accordance therewith, which entitle us to admission into the union, upon a condition which has been fulfilled, do, by our delegates in convention assembled, mutually agree to form ourselves into a free and independent state, by the style and title of "The State of Michigan," and do ordain and establish the following constitution for the government of the same :

Preamble.

ARTICLE I.

1. All political power is inherent in the people.

Political power.

2. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times to alter or reform the same, and to abolish one form of government and establish another, whenever the public good requires it.

Right of the people.

3. No man or set of men are entitled to exclusive or separate privileges.

No exclusive privileges.

5. Every person has a right to worship Almighty God according to the dictates of his own conscience; and no person can of right be compelled to attend, erect, or support, against his will, any place of religious worship, or pay any tithes, taxes, or other rates, for the support of any minister of the gospel or teacher of religion.

Religious worship.

5. No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.

No money to be drawn from treasury for religious purposes.

6. The civil and religious rights, privileges and capacities of no individual shall be diminished or enlarged on account of his opinions or belief concerning matters of religion.

Rights of opinion.

7. Every person may freely speak, write, and publish his senti-

Liberty of speech and of the press.

ments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Of searches and seizures.

8. The person, houses, papers and possessions of every individual shall be secure from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them, nor without probable cause, supported by oath or affirmation.

Trial by jury.

9. The right of trial by jury shall remain inviolate.

Rights of the accused.

10. In all criminal prosecutions, the accused shall have the right to a speedy and public trial by an impartial jury of the vicinage; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defence; and in all civil cases, in which personal liberty may be involved, the trial by jury shall not be refused.

Presentment or indictment in criminal cases.

11. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia when in actual service in time of war or public danger.

Bailable before conviction, and privilege of writ of habeas corpus

12. No person, for the same offence, shall be twice put in jeopardy of punishment. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

Right to bear arms.

13. Every person has a right to bear arms for the defence of himself and the state.

Military subordinate to civil power.

14. The military shall, in all cases and at all times, be in strict subordination to the civil power.

Quartering of soldiers.

15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

Treason.

16. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Attainder, &c.

17. No bill of attainder, ex-post-facto law, or law impairing the obligation of contracts, shall be passed.

Excessive bail,—and punishment,

18. Excessive bail shall not be required; excessive fines shall not be imposed; and cruel and unjust punishments shall not be inflicted.

Taking of property for public use.

19. The property of no person shall be taken for public use, without just compensation therefor.

Right of petition.

20. The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Acts void.

21. All acts of the legislature, contrary to this or any other article of this constitution, shall be void.

ARTICLE II.

ELECTORS.

1. In all elections, every white male citizen above the age of twenty-one years, having resided in the state six months next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of this state at the time of the signing of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district, county,* or township in which he shall actually reside at the time of such election.

Qualifications of electors.

*See amendment No. 1.

2. All votes shall be given by ballot, except for such township officers as may, by law, be directed to be otherwise chosen.

Votes by ballot.

3. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

Privilege from arrest.

4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

Exemption from military duty.

5. No person shall be deemed to have lost his residence in this state, by reason of his absence on business of the United States, or of this state.

On account of absence.

6. No soldier, seaman or marine, in the army or navy of the United States, shall be deemed a resident of this state, in consequence of being stationed in any military or naval place within the same.

Soldiers, seamen and marines.

ARTICLE III.

DIVISION OF THE POWERS OF GOVERNMENT.

1. The powers of the government shall be divided into three distinct departments; the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this constitution.

Division of the powers of government.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

1. The legislative power shall be vested in a senate and house of representatives.

Legislative department.

2. The number of the members of the house of representatives shall never be less than forty-eight, nor more than one hundred; and the senate shall at all times equal in number one-third of the house of representatives, as nearly as may be.

House of representatives.

3. The legislature shall provide by law for an enumeration of the inhabitants of this state in the years one thousand eight hundred and thirty-seven, and one thousand eight hundred and forty-five, and every ten years after the said last-mentioned time; and at their first session after each enumeration so made as aforesaid, and also after each enumeration made by the authority of the United States, the legislature shall apportion anew the representatives and senators among the several counties and districts, according to the number of white inhabitants.

Enumeration of inhabitants; apportionment of representatives.

4. The representatives shall be chosen annually on the first Monday of November, and on the following day,* by the electors of the several counties or districts into which the state shall be divided for that purpose. Each organized county shall be entitled to at least one representative; but no county hereafter organized shall be entitled to a separate representative, until it shall have attained a population equal to the ratio of representation hereafter established.

When to be chosen; representation. *See amendment No. 3.

Senate, when chosen and period of service; senators classed; one-half the seats vacated every year.

5. The senators shall be chosen for two years, at the same time and in the same manner as the representatives are required to be chosen. At the first session of the legislature under this constitution, they shall be divided by lot from their respective districts, as nearly as may be, into two equal classes. The seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half thereof, as nearly as may be, shall be chosen annually thereafter.

Senatorial districts.

6. The state shall be divided, at each new apportionment, into a number of not less than four, nor more than eight, senatorial districts, to be always composed of contiguous territory; so that each district shall elect an equal number of senators annually, as nearly as may be; and no county shall be divided in the formation of such districts.

Qualifications of senators and representatives.

7. Senators and representatives shall be citizens of the United States and be qualified electors in the respective counties and districts which they represent; and a removal from their respective counties or districts shall be deemed a vacation of their seats.

United States officers ineligible.

8. No person holding any office under the United States, or of this state, officers of the militia, justices of the peace, associate judges of the circuit and county courts, and postmasters excepted, shall be eligible to either house of the legislature.

Privilege from arrest.

9. Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Quorum; officers

10. A majority of each house shall constitute a quorum to do business; but a similar number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide. Each house shall choose its own officers.

Rules; each house to judge of the election of its members.

11. Each house shall determine the rules of its proceedings, and judge of the qualifications, elections and returns of its own members; and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election.

Journals.

12. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy: and the yeas and nays of the members of either house, on any question, shall, at the request of one-fifth of the members present, be entered on the journal. Any member of either house shall have liberty to dissent from, and protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journal.

Elections, viva voce.

13. In all elections by either or both houses, the votes shall be given viva voce; and all votes on nominations made to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

Adjournment.

14. The doors of each house shall be open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the legislature may then be in session.

15. Any bill may originate in either house of the legislature.

Bills.

16. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by whom it shall likewise be reconsidered; and if approved also by two-thirds of all the members present in that house, it shall become a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: and if any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, the same shall become a law, in like manner as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall not become a law.

Power and duty of the governor in relation to bills; proceedings on bills returned by governor.

17. Every resolution to which the concurrence of the senate and house of representatives may be necessary, except in cases of adjournment, shall be presented to the governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

Joint resolutions to receive same sanction as bills.

18. The members of the legislature shall receive for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected; and such compensation shall never exceed three dollars a day.

Compensation of members.

19. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he is elected.

No member to receive a civil appointment.

20. The governor shall issue writs of election to fill such vacancies as may occur in the senate and house of representatives.

Writs of election.

21. The legislature shall meet on the first Monday in January, in every year, and at no other period, unless otherwise directed by law, or provided for in this constitution.

Meetings of the legislature.

22. The style of the laws of this state shall be: "Be it enacted by the senate and house of representatives of the state of Michigan."

Style of the laws.

ARTICLE V.

EXECUTIVE DEPARTMENT.

1. The supreme executive power shall be vested in a governor, who shall hold his office for two years; and a lieutenant governor shall be chosen at the same time and for the same term.

Governor and lieutenant governor.

2. No person shall be eligible to the office of governor or lieutenant governor, who shall not have been five years a citizen of the United States, and a resident of this state two years next preceding the election.

Eligibility.

3. The governor and lieutenant governor shall be elected by the electors at the times and places of choosing members of the legislature. The persons having the highest number of votes for governor and lieutenant governor shall be elected; but in case two or more have an equal and the highest number of votes for governor or lieutenant governor, the legislature shall, by joint vote, choose one of the said persons so having an equal and the highest number of votes, for governor or lieutenant governor.

How chosen.

Returns of election.

4. The returns of every election for governor and lieutenant governor, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses.

Power of the governor.

5. The governor shall be commander-in-chief of the militia, and of the army and navy of this state.

Executive business.

6. He shall transact all executive business with the officers of government, civil and military; and may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Execution of the laws.

7. He shall take care that the laws be faithfully executed.

Convening of the legislature.

8. He shall have power to convene the legislature on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters to them as he shall deem expedient.

Adjournment.

9. He shall have power to adjourn the legislature to such time as he may think proper, in case of a disagreement between the two houses with respect to the time of adjournment, but not to a period beyond the next annual meeting.

Place of meeting.

10. He may direct the legislature to meet at some other place than the seat of government, if that shall become, after its adjournment, dangerous from a common enemy or a contagious disease.

Reprieves and pardons.

11. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

Appointments in cases of vacancy.

12. When any office, the appointment to which is vested in the governor and senate, or in the legislature, becomes vacant during the recess of the legislature, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the succeeding session of the legislature.

If the office become vacant, lieutenant governor to act.

13. In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor until such disability shall cease, or the vacancy be filled.

When president pro tem to act as governor.

14. If, during the vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate, pro tempore, shall act as governor, until the vacancy be filled.

Lieutenant governor to be president of the senate.

15. The lieutenant governor shall, by virtue of his office, be president of the senate; in committee of the whole, he may debate on all questions; and when there is an equal division, he shall give the casting vote.

Who shall not execute the office of governor.

16. No member of congress, nor any other person holding office under the United States, or this state, shall execute the office of governor.

Provisions for filling vacancies.

17. Whenever the office of governor or lieutenant governor becomes vacant, the person exercising the powers of governor for the time being shall give notice thereof, and the electors shall, at the next succeeding annual election for members of the legislature, choose a person to fill such vacancy.

Compensation of governor.

18. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he has been elected.

Compensation of lieutenant governor.

19. The lieutenant governor, except when acting as governor,

and the president of the senate pro tempore, shall each receive the same compensation as shall be allowed to the speaker of the house of representatives.

20. A great seal for the state shall be provided by the governor, which shall contain the device and inscriptions represented and described in the papers relating thereto, signed by the president of the convention, and deposited in the office of the secretary of the territory. It shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

Great seal for state.

Grants and commissions.

21. All grants and commissions shall be in the name and by the authority of the people of the state of Michigan.

ARTICLE VI.

JUDICIAL DEPARTMENT.

1. The judicial power shall be vested in one supreme court, and in such other courts as the legislature may from time to time establish.

Judicial power.

2. The judges of the supreme court shall hold their offices for the term of seven years; they shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. They shall receive an adequate compensation, which shall not be diminished during their continuance in office. But they shall receive no fees nor perquisites of office, nor hold any other office of profit or trust under the authority of this state or of the United States.

Term of appointment and compensation.

3. A court of probate shall be established in each of the organized counties.

Courts of probate.

4. Judges of all county courts, associate judges of circuit courts, and judges of probate, shall be elected by the qualified electors of the county in which they reside, and shall hold their offices for four years.

Election of county judges, &c.

5. The supreme court shall appoint their clerk or clerks; and the electors of each county shall elect a clerk, to be denominated a county clerk, who shall hold his office for the term of two years, and shall perform the duties of clerk to all the courts of record to be held in each county, except the supreme court and court of probate.

Clerks.

6. Each township may elect four justices of the peace, who shall hold their offices for four years; and whose powers and duties shall be defined and regulated by law. At their first election they shall be classed and divided by lot into numbers one, two, three, and four, to be determined in such manner as shall be prescribed by law, so that one justice shall be annually elected in each township thereafter. A removal of any justice from the township in which he was elected, shall vacate his office. In all incorporated towns, or cities, it shall be competent for the legislature to increase the number of justices.

Justices of the peace.

7. The style of all process shall be, "In the name of the people of the state of Michigan;" and all indictments shall conclude against the peace and dignity of the same.

Style of process.

ARTICLE VII.

CERTAIN STATE AND COUNTY OFFICERS.

1. There shall be a secretary of state, who shall hold his office for two years, and who shall be appointed by the governor, by and with the advice and consent of the senate. He shall keep a fair record of

Secretary of state, his duties.

the official acts of the legislative and executive departments of the government; and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature; and shall perform such other duties as shall be assigned him by law.

State treasurer.

2. A state treasurer shall be appointed by a joint vote of the two houses of the legislature, and shall hold his office for the term of two years.

Auditor general;
attorney general;
prosecuting
attorneys.

3. There shall be an auditor general and an attorney general for the state, and a prosecuting attorney for each of the respective counties, who shall hold their offices for two years, and who shall be appointed by the governor, by and with the advice and consent of the senate, and whose powers and duties shall be prescribed by law.

Sheriff; county
treasurer; coro-
ner; register of
deeds; county
surveyor.

4. There shall be a sheriff, a county treasurer, and one or more coroners, a register of deeds and a county surveyor, chosen by the electors in each of the several counties once in every two years, and as often as vacancies shall happen. The sheriff shall hold no other office, and shall not be capable of holding the office of sheriff longer than four in any term of six years; he may be required by law to renew his security from time to time, and in default of giving such security, his office shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff.

ARTICLE VIII.

IMPEACHMENTS AND REMOVALS FROM OFFICE.

Impeachments.

1. The house of representatives shall have the sole power of impeaching all civil officers of the state, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall be necessary to direct an impeachment.

Mode of pro-
ceeding.

2. All impeachments shall be tried by the senate. When the governor or lieutenant governor shall be tried, the chief justice of the supreme court shall preside. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try and determine the charge in question according to the evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

Power of the
governor to re-
move judges.

3. For any reasonable cause, which shall not be sufficient ground for the impeachment of the judges of any of the courts, the governor shall remove any of them on the address of two-thirds of each branch of the legislature; but the cause or causes for which such removal may be required shall be stated at length in the address.

Removals of
justices of the
peace, &c.

4. The legislature shall provide by law for the removal of justices of the peace, and other county and township officers, in such manner and for such cause as to them shall seem just and proper.

ARTICLE IX.

MILITIA.

Legislature to
provide for or-
ganization of mi-
litia.

1. The legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States.

Discipline of
officers.

2. The legislature shall provide for the efficient discipline of the officers, commissioned and non-commissioned, and musicians, and may

provide by law for the organization and discipline of volunteer companies.

3. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the governor. Election of officers.

4. The governor shall have power to call forth the militia, to execute the laws of the state, to suppress insurrections and repel invasions. To call forth the militia.

ARTICLE X.

EDUCATION.

1. The governor shall nominate, and by and with the advice and consent of the legislature, in joint vote, shall appoint a superintendent of public instruction, who shall hold his office for two years, and whose duties shall be prescribed by law. Superintendent of public instruction.

2. The legislature shall encourage, by all suitable means, the promotion of intellectual, scientific and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together, with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state. Fund for the support of schools.

3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district at least three months in every year; and any school district neglecting to keep up and support such a school, may be deprived of its equal proportion of the interest of the public fund. Providing for a system of common schools.

4. As soon as the circumstances of the state will permit, the legislature shall provide for the establishment of libraries; one at least [in] each township; and the money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied for the support of said libraries. Libraries.

5. The legislature shall take measures for the protection, improvement or other disposition of such lands as have been or may hereafter be reserved or granted by the United States to this state for the support of a university; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund for the support of said university, with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences, and as may be authorized by the terms of such grant; and it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university. Fund for the support of a university.

ARTICLE XI.

PROHIBITION OF SLAVERY.

1. Neither slavery nor involuntary servitude shall ever be introduced into this state, except for the punishment of crimes of which the party shall have been duly convicted. Slavery prohibited.

ARTICLE XII.

MISCELLANEOUS PROVISIONS.

1. Members of the legislature, and all officers, executive and judi-

- Oath or affirmation.** cial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of—— according to the best of my ability." And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.
- Acts of incorporation, two-thirds vote.** 2. The legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house.
- Internal improvement.** 3. Internal improvement shall be encouraged by the government of this state; and it shall be the duty of the legislature, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals, and navigable waters; and it shall also be their duty to provide by law for an equal, systematic, economical application of the funds which may be appropriated to these objects.
- Drawing of money from the treasury.** 4. No money shall be drawn from the treasury but in consequence of appropriations made by law, and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws annually.
- Divorces.** 5. Divorces shall not be granted by the legislature; but the legislature may by law authorize the higher courts to grant them, under such restrictions as they may deem expedient.
- Lotteries.** 6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.
- Organization of counties.** 7. No county now organized by law shall ever be reduced, by the organization of new counties, to less than four hundred square miles.
- Location of state offices.** 8. The governor, secretary of state, treasurer, and auditor general, shall keep their offices at the seat of government.
- Seat of government.** 9. The seat of government for this state shall be at Detroit, or at such other place or places as may be prescribed by law, until the year eighteen hundred and forty-seven, when it shall be permanently located by the legislature.
- Governor and lieutenant governor, term of office.** 10. The first governor and lieutenant governor shall hold their offices until the first Monday of January, one thousand eight hundred and thirty-eight, and until others shall be elected and qualified; and thereafter they shall hold their offices for two years, and until their successors shall be elected and qualified.
- In cases of vacancy.** 11. When a vacancy shall happen, occasioned by the death, resignation, or removal from office of any person holding office under this state, the successor thereto shall hold his office for the period which his predecessor had to serve, and no longer, unless again chosen or re-appointed.

ARTICLE XIII.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

- Amendments, how to be made.** 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; And



SCHEDULE.

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if in the legislature next chosen as aforesaid, such proposed [amendment or] amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.

2. And if at any time two-thirds of the senate and house of representatives shall think it necessary to revise or change this entire constitution, they shall recommend to the electors at the next election for members of the legislature, to vote for or against a convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the legislature shall at its next session provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature.

How to revise or change the entire constitution.

SCHEDULE.

1. That no inconvenience may arise from a change of the territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, contracts, claims and rights of individuals and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Michigan, shall be as valid as if issued in the name of the state.

Rights of individuals, &c.

2. All laws now in force in the territory of Michigan, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the legislature.

Laws to remain in force.

3. All fines, penalties, forfeitures and escheats, accruing to the territory of Michigan, shall accrue to the use of the state.

Fines, &c.,

4. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state. And all bonds executed to the governor of this territory, or to any other officer in his official capacity, shall pass over to the governor or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions, which have arisen or which may arise before the organization of the judicial department under this constitution, and which shall then be depending, may be prosecuted to judgment and execution in the name of the state.

Recognizances valid.

5. All officers, civil and military, now holding their offices and appointments in this territory under the authority of the United States,

Officers, &c.

SCHEDULE.

or under the authority of this territory, shall continue to hold and exercise their respective offices and appointments until superseded under this constitution.

Election of governor, &c.

6. The first election for governor, lieutenant governor, members of the state legislature, and a representative in the congress of the United States, shall be held on the first Monday in October next, and on the succeeding day. And the president of the convention shall issue writs to the sheriffs of the several counties or districts, or, in case of vacancy, to the coroners, requiring them to cause such election to be held on the days aforesaid, in their respective counties or districts. The election shall be conducted in the manner prescribed, and by the township officers designated as inspectors of elections, and the returns made as required by the existing laws of the territory, or by this constitution: Provided, however, That the returns of the several townships in the district composed of the unorganized counties of Ottawa, Ionia, Kent and Clinton, shall be made to the clerk of the township of Kent, in said district, and the said township clerk shall perform the same duties, as by the existing laws of the territory, devolve upon the clerks of the several counties in similar cases.

Meeting of legislature.

7. The first meeting of the legislature shall be at the city of Detroit, on the first Monday in November next, with power to adjourn to any other place.

County and township officers

8. All county and township officers shall continue to hold their respective offices, unless removed by the competent authority, or until the legislature shall, in conformity to the provisions of this constitution, provide for the holding of elections to fill such offices respectively.

When constitution to be submitted.

9. This constitution shall be submitted, at the election to be held on the first Monday in October next, and on the succeeding day, for ratification or rejection, to the electors qualified by this constitution to vote at all elections; and if the same be ratified by the said electors, the same shall become the constitution of the state of Michigan. At the election aforesaid, on such of the ballots as are for the said constitution, shall be written or printed the word "yes," and on those which are against the ratification of said constitution, the word "no." And the returns of the votes on the question of ratification [or rejection] of said constitution, shall be made to the president of this convention at any time before the first Monday in November next, and a digest of the same communicated by him to the senate and house of representatives on that day.

If ratified, duties of president of the convention.

10. And if this constitution shall be ratified by the people of Michigan, the president of this convention shall, immediately after the same shall be ascertained, cause a fair copy thereof, together with an authenticated copy of the act of the legislative council, entitled "An act to enable the people of Michigan to form a constitution and state government," approved January twenty-sixth, eighteen hundred and thirty-five, providing for the calling of this convention, and also a copy of so much of the last census of this territory as exhibits the number of free inhabitants of that part thereof which is comprised within the limits in said constitution defined as the boundaries of the proposed state of Michigan, to be forwarded to the president of the United States, together with an expression of the decided opinion of this convention, that the number of the free inhabitants of said proposed state now exceeds the number requisite to constitute two congressional districts, and the respectful request of this convention, in behalf of

the people of Michigan, that all said matters may be by him laid before the congress of the United States at their next session.

11. In case of the failure of the president of this convention to perform the duties prescribed by this constitution by reason of his absence, death, or from any other cause, said duties shall be performed by the secretaries of this convention. If absent.

12. Until the first enumeration shall be made as directed by this constitution, the county of Wayne shall be entitled to eight representatives; the county of Monroe to four representatives; the county of Washtenaw to seven representatives; the county of St. Clair to one representative; the county of St. Joseph to two representatives; the county of Berrien to one representative; the county of Calhoun to one representative; the county of Jackson to one representative; the county of Cass to two representatives; the county of Oakland to six representatives; the county of Macomb to three representatives; the county of Lenawee to four representatives; the county of Kalamazoo, and the unorganized counties of Allegan and Barry to two representatives; the county of Branch to one representative; the county of Hillsdale to one representative; the county of Lapeer to one representative; the county of Saginaw, and the unorganized counties of Genesee and Shiawassee, to one representative; the county of Michilimackinac to one representative; the county of Chippewa to one representative; and the unorganized counties of Ottawa, Kent, Ionia, and Clinton to one representative. Distribution of representatives.

And for the election of senators, the state shall be divided into five districts, and the apportionment shall be as follows: The county of Wayne shall comprise the first district, and elect three senators; the counties of Monroe and Lenawee shall compose the second district, and elect three senators; the counties of Hillsdale, Branch, St. Joseph, Cass, Berrien, Kalamazoo and Calhoun shall compose the third district, and elect three senators; the counties of Washtenaw and Jackson shall compose the fourth district, and elect three senators; and the counties of Oakland, Lapeer, Saginaw, Macomb, St. Clair, Michilimackinac and Chippewa shall compose the fifth district, and elect four senators.

Any country attached to any county for judicial purposes, if not otherwise represented, shall be considered as forming part of such county, so far as regards elections for the purpose of representation in the legislature.

JOHN BIDDLE, *President.*

AMENDMENTS.

[The following amendment to the constitution was proposed by the legislature in 1838, referred to the legislature of 1839, agreed to in 1839 by two-thirds of all the members elected to each house, submitted to the people and approved and ratified at an election held in November, 1839:]

AMENDMENT NO. I.

1838, p 228, 1839,
p 261.

That so much of the first section of the second article of the constitution as prescribes the place in which an elector may vote, and which is in these words, to wit: "district, county or township," be abolished, and that the following be substituted in the place thereof, to wit: "Township or ward."

[The following amendment was proposed in 1842, and referred to the next legislature, submitted to the people by a joint resolution, approved March 9, 1843, and approved and ratified at the election in November, 1843:]

AMENDMENT NO. II.

1842, p 157, 1843,
p 231.

That the constitution of this state be so amended, that every law authorizing the borrowing of money or the issuing of state stocks, whereby a debt shall be created on the credit of the state, shall specify the object for which the money shall be appropriated; and that every such law shall embrace no more than one such object, which shall be simply and specifically stated, and that no such law shall take effect until it shall be submitted to the people at the next general election, and be approved by a majority of the votes cast for and against it at such election; that all money to be raised by the authority of such law be applied to the specific object stated in such law, and to no other purpose, except the payment of such debt thereby created. This provision shall not extend or apply to any law to raise money for defraying the actual expenses of the legislature, the judicial and state officers, for suppressing insurrection, repelling invasion, or defending the state in time of war. [See note.]

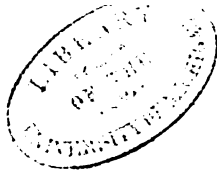
[The following amendment was proposed in 1843, referred to the next legislature, agreed to in 1844 by two-thirds of all the members elected to each house, submitted to the people, and ratified and approved at the election in November, 1844:]

AMENDMENT NO. III.

Strike out of section four of article four, the words "On the first Monday in November and on the following days," and insert the words "On the first Tuesday," so that said section will read:

The representatives shall be chosen annually on the first Tuesday of November, by the electors of the several counties or districts into which the state shall be divided for that purpose. [See note.]

NOTE.—Amendment No. 2 does not appear to have been agreed to by the legislature of 1843, as the constitution requires. All that appears in the published laws of that year in reference to it, is Joint Resolution No. 22, which provides that it be submitted to the people



at the then next general election; but makes no provision for the return or canvass of the votes. The votes, however, were returned, and canvassed by the board of state canvassers, and the result thus ascertained to be in favor of the amendment.

It appears from the journal of the house of representatives for 1843, that on the 16th of February, the joint resolution of the previous legislature, proposing this amendment, was called up, and the house refused to agree—yeas 34, nays 15; which vote was, on the same day, reconsidered (House Journal, p. 301, 303). On the 9th of March, "the joint resolution amending the constitution was considered, the rules suspended, and the same adopted," (House Journal, p. 350), but the yeas and nays were not entered upon the journal.

On the same day, the "joint resolution in relation to the amendment of the constitution," proposed by the legislature in 1842, was taken up in the senate and adopted—yeas 15, nays 3 (Senate Journal, p. 412). A message was afterwards on that day received from the house, transmitting "joint resolution in relation to amendment of constitution," which the house had passed, and the rule was thereupon suspended, and the resolution adopted, the yeas and nays not being entered upon the journal (Senate Journal, p. 418, 419).

On that day, a message from the senate was received by the house, returning "joint resolution in relation to the amendment of the constitution," and advising the house that the senate had concurred therein; and the same was thereupon ordered to be enrolled (House Journal, p. 533-4).

On the same day, a message was received by the house from the governor, advising the house that he had approved and deposited with the secretary of state, "joint resolution for amending the constitution of the state of Michigan," (House Journal, p. 538).

It seems therefore to be a matter of doubt whether the resolution of 1842, relative to borrowing money, &c., was actually agreed to by the legislature of 1843. The resolution for submitting the amendment to the people, is entitled "Joint Resolution."

Amendment No. 3, as proposed in 1843, was modified in form, but not in substance, by the joint resolution approved January 16, 1844. The words stricken out, and those inserted by this amendment, leave no designation of the month in which the election is to be holden, yet the section is made to read as though the words "of November" had not been stricken out.

The language of the amendment also implies that the reading of the whole of section 4, of article 4 of the constitution, is given in the resolution, whereas it includes only the first clause of that section.

REVISED STATUTES.

REVISED STATUTES.

AN ACT

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES OF THE STATE OF MICHIGAN.

Whereas, it is expedient that the general statutes of this state should be consolidated, revised and amended, and arranged in appropriate titles, chapters and sections, and that omissions should be supplied: Therefore,

Be it enacted by the Senate and House of Representatives of the State of Michigan, In manner following, that is to say:—

TITLE I.

OF THE STATUTES AND THE LEGISLATURE.

Chapter 1. Of the Statutes.

Chapter 2. Of the Legislature.

CHAPTER 1.

OF THE STATUTES.

SECTION 1. The original acts of the legislature shall be deposited with, and kept by the secretary of state; and they shall be recorded by him in books to be provided by him at the expense of the state, in the order in which they were passed; and he shall carefully compare such records with the original acts.

Original acts—
where deposited
and recorded.

Laws 1837-8, p.
258.

SEC. 2. Every statute which does not expressly prescribe the time when it shall go into operation, shall take effect throughout the state on the sixtieth day next after that on which it shall be approved by the governor, or otherwise become a law according to the provisions of the constitution.

When statutes to
take effect.

SEC. 3. In the construction of the statutes of this state, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say:

Rules of con-
struction of stat-
utes.

1. All words and phrases shall be construed and understood ac-

**TITLE I.
CHAPTER 1.**

cording to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning:

2. Every word importing the singular number only, may extend to and embrace the plural number, and every word importing the plural number, may be applied and limited to the singular number; and every word importing the masculine gender only, may extend and be applied to females as well as males:

3. All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority:

4. The words "annual meeting," when applied to townships, shall be construed to mean the annual meeting required by law to be held in the month of April:

5. The word "grantor," may be construed as including every person from or by whom any estate in lands passes, in or by any deed; and the word "grantee," as including every person to whom any such interest or estate passes in like manner:

6. The word "inhabitant," may be construed to mean a resident of a city, township, village, district, or county:

7. The words "insane person," shall be construed to include an idiot, a non compos, lunatic, and distracted person:

8. The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor:

9. The word "land," or "lands," and the words "real estate," shall be construed to include lands, tenements, and real estate, and all rights thereto, and interests therein:

10. The word "month," shall be construed to mean a calendar month; and the word "year," a calendar year; and the word "year" alone, shall be equivalent to the words "year of our Lord: "

11. The word "oath," shall be construed to include the word "affirmation," in all cases where by law an affirmation may be substituted for an oath; and in like cases the word "sworn" shall be construed to include the word "affirmed: "

12. The word "person," may extend and be applied to bodies politic and corporate, as well as to individuals:

13. The words "preceding" and "following," when used by way of reference to any title, chapter or section of these revised statutes, shall be construed to mean the title, chapter or section next preceding, or next following that in which such reference is made, unless when some other title, chapter or section is expressly designated in such reference:

14. In all cases in which the seal of any court or public office shall be required to be affixed to any paper issuing from such court or office, the word "seal," shall be construed to mean the impression of such seal on such paper alone, as well as the impression of such seal affixed thereto by means of a wafer or wax:

15. The word "state," when applied to the different parts of the United States, shall be construed to extend to, and include the district of Columbia, and the several territories belonging to the United States; and the words "United States," shall be construed to include the said district and territories:

16. The word "will," shall be construed to include codicils, as well as wills:

TITLE I.
CHAPTER 1.

17. The words "written," and "in writing," may be construed to include printing, engraving and lithographing; except that in all cases where the written signature of any person is required by law, it shall always be the proper hand writing of such person; or in case he is unable to write, his proper mark:

18. All acts of incorporation shall be deemed public acts, and as such, may be declared on, and given in evidence, without specially pleading the same:

19. The words "general election," shall be construed to mean the election required by law to be held in the month of November.

SEC. 4. Whenever a statute, or any part thereof, shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.

Repeal of repealing statute.

SEC. 5. The secretary of state, immediately after any act of the legislature shall have been deposited with him, shall furnish a true copy thereof to the publishers of the state paper, who shall immediately publish the same in such paper.

Secretary of state to furnish copies of statutes for publication.
1837, p. 22.

SEC. 6. The secretary of state shall be entitled to one copy of the statutes for the use of his office, and he shall annually, and from time to time, immediately after their publication in volumes, deposit thirty copies thereof in the state library, for the use of the legislature, and distribute to the following public officers, persons, corporations and societies, one copy each, that is to say:

Distribution of statutes.

The governor, lieutenant governor, senators and members of the house of representatives, the secretary of the senate and clerk of the house of representatives, the senators and representatives of this state in congress, the secretary of state of the United States, chancellor, each judge of a court of record in this state, attorney general, auditor general, state treasurer, adjutant general, the president of the board of internal improvements, superintendent of public instruction, superintendent of the state prison, judge of the district court of the United States for the district of Michigan, clerk of the last named court, the several clerks and registers of courts of record, masters in chancery, prosecuting attorneys, sheriffs, keepers of jails, judges of probate, registers of deeds, county treasurers, county surveyors, coroners, justices of the peace, supervisors and clerks of townships, for the use of their townships, the historical society of Michigan, the library of congress, the library of the university of Michigan, and of each branch thereof, the governor of each of the states and territories of the United States, for the use of such state or territory.

Who entitled to copy.

SEC. 7. Each county clerk, within one month after the adjournment of the legislature in each year, shall forward to the secretary of state, a statement of the number of officers, persons, corporations, and societies in his county, entitled by law to a copy of the laws of the next preceding session of the legislature; and as soon as the same are ready for distribution, the secretary of state shall, at his office, deliver to such clerk, or to his order, properly packed, the number of copies set forth in such statement, and take a receipt therefor.

County clerks to furnish secretary of state with No. of officers &c. entitled to copy of laws.

1837-8, p. 251.

SEC. 8. The county clerk, on the receipt of the laws, shall give notice thereof in a newspaper published in his county, if there be one,

County clerk to give notice, and take receipt.

**TITLE I.
CHAPTER 2.**

Officer receiving statutes, to deliver same to his successor—consequence of neglect.

and if not, by posting up notices in three or more of the most public places therein; and he shall take and preserve in his office, a receipt for each copy distributed by him, from the person entitled to and receiving the same.

SEC. 9. Every person receiving a copy of the laws on account of any office held by him, shall, when he ceases to hold such office, deliver over to his successor in office all laws received by him as such officer, and take the receipt of his successor therefor, and deposite such receipt, if a township officer, with the township clerk, and if a county officer, with the county clerk; and any person who shall neglect or refuse to deliver over to his successor in office, all laws received by him as aforesaid, shall be liable to such successor in an action for money had and received, to the full amount it shall cost him to furnish himself with such laws, and costs of suit; which action shall, on request, be brought and prosecuted by the prosecuting attorney of the county.

Expense of notice and transportation, how paid.

SEC. 10. The expense of publishing the notice aforesaid, and of transporting the laws from the office of the secretary of state to the county clerk's office, shall be audited and allowed by the auditor general, and paid out of the state treasury.

Secretary to give notice when laws are ready for distribution.

SEC. 11. As soon as the laws are ready for distribution, the secretary of state shall transmit a written or printed notice thereof to each county clerk; and the expense of such notice, and all accounts for boxes furnished to the secretary of state, for the package and distribution of the laws, when certified by him to be correct, shall be audited and allowed by the auditor general, and paid out of the state treasury.

CHAPTER 2.

OF THE LEGISLATURE.

Officers of senate &c., when not to be arrested.

SECTION 1. No officer of the senate or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process.

What offences may be punished as contempts. Constitution of Mich., art. 4, sec. 9.

SEC. 2. Each house may punish as a contempt, and by imprisonment, a breach of its privileges, or the privileges of its members, but only for one or more of the following offences, to wit:

1. The offence of arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privilege from arrest:

2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings:

3. That of refusing to attend, or be examined as a witness, either before the house, or a committee, or before any person authorised by the house, or by a committee, to take testimony in legislative proceedings:

4. That of giving or offering a bribe to a member, or of attempting by menace, or other corrupt means or device, directly or indirectly to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section, shall not extend beyond the same session of the legislature.

Sec. 3. Every person who shall be guilty of any contempt specified in the preceding section, shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment in the county jail, in the discretion of the court.

**TITLE 1.
CHAPTER 2.**
Contempt to be deemed a misdemeanor.

Sec. 4. The oath of office of any member or officer of the senate or house of representatives, may be administered by, and taken and subscribed before the chancellor, any justice of the supreme court, the lieutenant governor, the president pro tempore of the senate, or the speaker of the house of representatives.

By whom oath of members to be administered.
1841, p. 10.

Sec. 5. Any senator or representative, while acting as a member of a committee of the legislature, or either branch thereof, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member.

Members of committees may administer oaths.
1839, p. 214.

**TITLE II.
CHAPTER 3.**

TITLE II.

OF ELECTIONS OTHER THAN FOR MILITIA AND TOWNSHIP OFFICERS.

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- Chapter 3. Of General and Special Elections.
 - Chapter 4. Of Notifying Elections.
 - Chapter 5. Of the manner of conducting the General Election.
 - Chapter 6. Of the Canvass by the Inspectors.
 - Chapter 7. Of the County Canvass and the proceedings thereon.
 - Chapter 8. Of the District Canvass.
 - Chapter 9. Of the State Canvass.
 - Chapter 10. Miscellaneous Provisions relating to Elections.
 - Chapter 11. Of the election of Representatives in Congress, Electors of President and Vice President, and Senators in Congress.
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CHAPTER 3.

OF GENERAL AND SPECIAL ELECTIONS.

SECTION 1. An election shall be holden in the several townships and wards in this state, on the first Tuesday of November in each year, which shall be called the general election.

General election
when to be held.

Officers to be
elected.

SEC. 2. There shall be elected at such general election, so many of the following officers as are to be chosen in each year, respectively, that is to say: A governor, lieutenant governor, the senators and representatives in the state legislature, electors of president and vice president of the United States, representatives in congress, and the following county officers, to wit: Judges of the county court, judges of probate, sheriffs, coroners, clerks, registers of deeds, treasurers and surveyors, and such other officers as may by law be required to be elected at any general election.

In what cases
special elections
may be held.

SEC. 3. Special elections may be held in the following cases, and for the election of the following officers, that is to say:

1. When a vacancy shall occur in the office of senator or representative in the state legislature:

2. When there has been no choice at a general election, of a representative in congress, or of any county officer named in the next preceding section, properly to have been chosen at such general election:

3. When the right of office of a person elected to the office of representative in congress, or to either of the said county offices, shall cease before the commencement of the term of service for which he shall have been elected:

4. When a vacancy shall occur in either of the said county offices, after the commencement of the term of service, and more than three months before the next general election:

5. When, in any other case of a vacancy, not particularly provided for in this section, the governor shall, in his discretion, so direct.

SEC. 4. No special election shall be held within forty days next preceding a general election, except in cases where the governor shall order a special election.

TITLE II.
CHAPTER 4.

When not to be held.

SEC. 5. A vacancy in either of the offices named in the second section of this chapter, which shall not have been supplied before a general election, may be supplied at such election; and a vacancy in any county office named in the second section of this chapter, shall be ordered by the board of supervisors to be filled at such general election.

When vacancy to be supplied at general election.

SEC. 6. Special elections for the choice of the county officers named in section two of this chapter, shall, except in cases in which a special election is to be ordered by the governor, be ordered by the board of supervisors.

Special election, when to be ordered by supervisors.

SEC. 7. Special elections shall be held and continued one day only, and shall be conducted, and the result thereof canvassed and certified, in all respects, as near as may be, in like manner as general elections, except as otherwise directed.

To be held one day only.

SEC. 8. In elections for the choice of all officers named in the second section of this chapter, the persons having the greatest number of votes shall be deemed to have been duly elected.

Persons having greatest number of votes deemed elected.

SEC. 9. Whenever the time fixed by the law of congress for the election of electors of president and vice-president of the United States, shall not occur on the day appointed for holding the general election, such election for electors of president and vice-president, shall be holden on the day so fixed by the law of congress therefor.

Election of electors of president in certain cases.

SEC. 10. All the provisions of law relating to the notifying and holding of the general election, and the election of electors of president and vice-president thereat, shall apply to every such election holden pursuant to the provisions of the preceding section, and the votes given for such electors shall be returned and canvassed, and the result determined in the same manner, in all respects, and with the like effect, as in case of the election of such electors at a general election.

Provisions relating to general election to apply.

CHAPTER 4.

OF NOTIFYING ELECTIONS.

SECTION 1. When a vacancy shall occur in the office of governor or lieutenant governor, twenty days or more before the general election in the first year of the constitutional term for which such officers shall have been elected, the person officiating as governor for the time being shall, at least twenty days before such election, cause a written notice under his hand to be sent to the sheriff of each county in the state; which notice shall state in what office the vacancy has occurred; and that such vacancy will be supplied at the next general election.

Notice of supplying vacancy in office of governor, &c.

SEC. 2. The secretary of state shall, between the first day of July and the first day of September in each and every year in which a governor and lieutenant governor, or representatives in congress, are to be elected for a full term of office, or in which electors of president and vice-president are to be elected, direct and cause to be delivered to the sheriff of each county, a notice in writing, that at the next general election a governor and lieutenant governor, electors of president and vice-president, a representative in congress for the district to

Notice of election of governor &c., to be given by secretary of state

**TITLE II.
CHAPTER 4.**

Notice of elec-
tion of senators.

which such county shall belong, or any or all of such officers, as the case may be, are to be elected.

SEC. 3. He shall also in each year, between the first day of July and the first day of September, direct and cause to be delivered to the sheriff of each county, a notice in writing, specifying the names of the senators, for the district to which such county shall belong, whose terms of office will expire on the last day of December thereafter, and whose successors are to be elected at the next general election.

Notice of vacan-
cy in office of
representative in
congress when
to be given.

SEC. 4. If any vacancy in the office of representative in congress, which may properly be supplied at a general election, shall exist one month before such election, the secretary of state shall, thirty days at least before such general election, give notice in writing to the sheriff of each county in the district where such vacancy exists; which notice shall specify the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office will expire.

Notice and writs
of election to be
published.
Cons. of U. S. art
1, § 2, sub. 4.

SEC. 5. The secretary of state shall cause a copy of each notice issued by him, and of each writ of election issued by the governor, to be published in the state paper once in each week from the date of such notice or writ, until the election to which it shall refer.

Duty of supervi-
sors, &c., in or-
dering vacancy
to be filled.

SEC. 6. When the board of supervisors of a county shall order a special election to fill a vacancy in any office, and when they shall order such vacancy to be filled at a general election, such order shall be in writing, and signed by the chairman and clerk of the board, and shall specify how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office will expire, and the day on which such special election shall be held, not being more than forty, nor less than thirty days from the making of such order; and such clerk shall, without delay, cause a copy of such order to be delivered to one of the inspectors of elections in each township, and in each ward of any city in the county.

Duty of sheriff
on receiving no-
tice.

SEC. 7. The sheriff, on receiving either of the notices directed in this chapter to be sent to him, shall forthwith cause a notice in writing to be delivered to the township clerk of each township, and to one of the inspectors of election in each ward in any city; which notice shall contain, in substance, the notices so received by such sheriff; and he shall also give at least twenty days' notice in writing, to be delivered to the township clerk of each township, and to one of the inspectors of election in each ward in any city in his county, of the holding of all general elections for the choice of county officers, designating the officers to be chosen at each and every such election.

Duty of town-
ship clerk, &c.,
on receiving no-
tice.

SEC. 8. The township clerk or inspector of elections receiving either of the notices directed in this chapter to be delivered to him, shall, by notice in writing under his hand, give at least eight days' notice to the electors of the township or ward, of the time and place at which such election is to be held, and the officers to be chosen; and if the notice is of a general election, it shall state whether any of the officers then to be chosen are to fill vacancies, and the names of those in whose offices the vacancies shall have occurred; and such township clerk or inspector shall cause such notices to be posted up in at least three of the most public places in the township or ward.

CHAPTER 5.

TITLE II.
CHAPTER 5.

OF THE MANNER OF CONDUCTING THE GENERAL ELECTION.

SECTION 1. At the general election, the supervisor, the justice of the peace whose term of office will first expire, and the township clerk of each township, and the assessor and aldermen of each ward in the city of Detroit, shall be the inspectors of election, two of whom shall constitute a quorum.

Inspectors of elections.

1839, p. 33, § 9.

SEC. 2. In case three of such inspectors shall not attend at the opening of the polls, or shall not remain in attendance during the election, the electors present may choose, viva voce, such number of such electors as, with the inspector or inspectors present, shall constitute a board of three in number, and such electors, so chosen, shall be inspectors of that election during the continuance thereof.

When electors to choose inspectors.

SEC. 3. The township clerk, if present, shall be required by the board to act as a clerk of the election, and before the opening of the polls, the inspectors in each township shall appoint another competent person to be a clerk of the election; and if the township clerk shall not be present, the board shall appoint two such clerks, and the inspectors in each ward in the city of Detroit shall appoint two competent persons to be such clerks; and each of the clerks so appointed, and each of the inspectors so chosen, shall take the constitutional oath of office, which oath either of the inspectors may administer.

Clerks of the election.

SEC. 4. The polls of the election shall be opened at eight o'clock in the forenoon, or as soon thereafter as may be on the day of election, and shall be continued open until five o'clock in the afternoon of the same day, and no longer; but the board may adjourn the polls at twelve o'clock noon, for one hour, in their discretion.

At what time polls to be opened and closed.

SEC. 5. The inspectors shall cause proclamation to be made of the opening and closing of the polls, and of each adjournment; and at the opening of the poll in the forenoon, the inspectors shall give notice thereof if any adjournment is to take place.

Proclamation to be made.

SEC. 6. When the supervisor shall be one of the board, he shall be chairman thereof; but if he be absent, such one of their number as the inspectors shall appoint, shall be chairman of the board.

Chairman of board.

SEC. 7. The electors shall vote by ballot, and each person offering to vote, shall deliver his ballot, so folded as to conceal the contents, to one of the inspectors, in the presence of the board.

Voting to be by ballot, &c.

SEC. 8. The ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of all the persons for whom the elector intends to vote, and shall designate the office to which each person so named, is intended by him to be chosen; but no ballot shall contain a greater number of names of persons as designated to any office, than there are persons to be chosen at the election to fill such office.

Ballot, what to contain.

People vs. Tisdale. 1 Doug. Mich. R. 59.

SEC. 9. If at a general election, there be one or more vacancies to be supplied in the office of senator, and at the same election a senator is to be elected for a constitutional term, it shall be necessary to designate in the ballot, the person or persons voted for to fill such vacancy or vacancies.

Designation of persons to fill vacancies.

SEC. 10. If any person offering to vote, shall be challenged as unqualified by any inspector, or any elector entitled to vote at that poll, the chairman of the board of inspectors shall declare to the person challenged, the qualifications of an elector; and if such person shall

Oath to be tendered to the person challenged.

**TITLE II.
CHAPTER 5.**

1841, p. 186.

Ballot box to be provided.

Ballots to be inserted through opening.

Box to be examined, locked, &c.

Ballots, how deposited.

Poll lists to be kept by clerks.

Comparing and correcting lists.

Lists and box and key, how kept, &c.

Key and box to be returned at next opening of poll, &c.

Duty of inspectors to challenge.

To keep order.

Persons disobeying commands of inspectors, how punished.

state that he is duly qualified, and the challenge shall not be withdrawn, one of the inspectors shall tender to him the following oath : " You do solemnly swear (or affirm) that you are twenty-one years of age, that you are a citizen of the United States, (or that you was an inhabitant of this state on the twenty-fourth day of June, one thousand eight hundred and thirty-five,) that you have resided in this state six months next preceding this day, that you now reside in this township (or ward, as the case may be,) and that you have not voted at this election ;" and if such person will take such oath, his vote shall be received.

SEC. 11. There shall be provided and kept by the township clerk in each township, at the expense of such township, and in each ward in the city of Detroit by the assessor thereof, at the expense of the said city, one suitable ballot box, with lock and key.

SEC. 12. There shall be an opening through the lid of the box, of the proper size to admit a single closed ballot, through which each ballot received shall be inserted.

SEC. 13. Before opening the poll, the ballot box shall be examined, that nothing may remain in it ; and it shall then be locked, and the key thereof be delivered to one of the inspectors to be designated by the board ; and the said box shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

SEC. 14. When a ballot shall be received, one of the inspectors, without opening the same or permitting it to be opened or examined, shall deposite such ballot in the box.

SEC. 15. Each of the clerks shall keep a poll list, which shall contain the names of all the electors voting at such election.

SEC. 16. At each adjournment of the poll the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of the votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 17. The ballot box shall then be opened, and the poll lists placed therein, and the box shall then be locked, and a covering with a seal placed on the opening in the lid of the box, and the key delivered to one of the inspectors, and the box to another, to be designated by the board.

SEC. 18. The inspector having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll ; and the inspector having the box shall carefully keep it without opening, or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that state to the board of inspectors at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

SEC. 19. It shall be the duty of each inspector to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector ; and the board of inspectors shall possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass and estimate of the votes, after closing of the poll.

SEC. 20. If any person shall refuse to obey such lawful commands of the inspectors, or by disorderly conduct in their presence or hearing, shall interrupt or disturb their proceedings, the inspectors may,

by an order in writing, commit the person so offending to the common jail of the county, for a period not exceeding twenty days.

**TITLE II.
CHAPTER 6.**

By whom order
of commitment
to be executed.

SEC. 21. Such order shall be executed by any sheriff, deputy sheriff, coroner or constable, to whom the same shall be directed, or if neither of said officers shall be present, such order may be executed by any other person deputed in writing by the inspectors.

CHAPTER 6.

OF THE CANVASS BY THE INSPECTORS.

SECTION 1. As soon as the poll of the general election shall be finally closed, the inspectors shall immediately proceed to canvass and ascertain the result of the election, unless they shall deem it necessary to adjourn such canvass to some convenient hour of the next day.

Inspectors, when
to canvass votes.

SEC. 2. If the canvass shall be so adjourned, the same course shall be observed in relation to the poll lists, box and key, as is required in the preceding chapter to be observed upon an adjournment of the poll.

If canvass ad-
journed, box &c.
how disposed of.

SEC. 3. The canvass shall be public, and shall commence by a comparison of the poll lists, and a correction of any mistakes that may be found therein, until they shall be found or made to agree.

Canvass to be
public, how to
be commenced.

SEC. 4. The box shall then be opened, and the ballots contained therein taken out and counted by the inspectors unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be destroyed.

Box to be open-
ed and ballots
counted.

When ballots to
be destroyed.

SEC. 5. If the ballots in the box shall be found to exceed in number the whole number of the votes on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy so many ballots therefrom unopened, as shall be equal to such excess.

If ballots exceed
number on poll
lists, excess to
be destroyed.

SEC. 6. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to canvass and estimate the votes; and they shall draw up a statement of the result, and cause a duplicate thereof to be made, which statement and duplicate shall be certified by the inspectors to be correct, and shall be subscribed with their names.

Canvass estimate
and statement of
votes.

SEC. 7. Such statements shall set forth in words at length, the whole number of votes given for each office, the names of the persons for which such votes for such office were given, and the number of votes so given for each person; and one of said statements shall forthwith be delivered to the township clerk, to be filed and preserved by him; and the other shall be delivered to one of the inspectors, who shall be appointed by the board to attend the county canvass.

What statement
to contain, and
how disposed of.

Vide form of
statements; laws
of 1839, p. 359,
&c.

SEC. 8. The inspectors shall preserve a true copy of all ballots rejected as defective, with the originals attached, and deliver the same to the township clerk to be filed in his office, and the other ballots they shall seal up and deliver to said clerk, who shall keep the same in his office until the next general election, subject only to the inspection of the proper authorities, in case of a contested election.

Ballots, how to
be kept.

SEC. 9. One of the poll lists shall be delivered to the township clerk,

Poll lists to be
filed, &c.

**TITLE II.
CHAPTER 7.**

and the other to the county clerk, which lists shall be filed and preserved by them in their respective offices. In the city of Detroit, the ballots, and one of such poll lists and statements, shall be delivered to the city clerk, and shall be kept and preserved by him.

CHAPTER 7.

OF THE COUNTY CANVASS AND PROCEEDINGS THEREON.

- SECTION 1.** The several inspectors appointed by the inspectors of election in townships and wards, to attend the county canvass, shall constitute the county board of canvassers, and shall meet on the Tuesday next following the election, before one o'clock in the afternoon, at the office of the county clerk, who shall be secretary of the board; or in his absence his deputy shall be such secretary.
- SEC. 2.** If either of the inspectors appointed to attend the county canvass, shall be unable to attend such canvass on the day appointed, he shall, on or before that day cause to be delivered at the office of the county clerk, the original statement of all votes given in his township or ward, which statement said clerk shall lay before the said canvassers.
- SEC. 3.** On the day appointed for such canvass, if a majority of the canvassers shall not attend, or if such statement of votes shall not be produced, the canvassers then present shall adjourn to some convenient hour of the next day.
- SEC. 4.** If all the original statements of the votes given in the several townships and wards shall not be produced on the day appointed for such canvass, the county clerk shall, by a special messenger, or otherwise, obtain such original statements as are not produced, or certified copies thereof, in time to be delivered to the board of canvassers at their said adjourned meeting.
- SEC. 5.** At the time to which such canvass was adjourned, the canvassers shall again meet; and such of them as shall be present, although less than a majority of the whole number, shall constitute the board of canvassers.
- SEC. 6.** The canvassers shall choose one of their number to be their chairman; and said board shall proceed to examine the original statements certified by the several boards of inspectors of election, or certified copies thereof, and ascertain the number of votes given in the county, and make statements thereof as the nature of the election may require.
- SEC. 7.** They shall make a separate statement, containing the whole number of votes given for the offices of governor and lieutenant governor, the names of the persons to whom such votes were given, and the number of votes given to each; another similar statement of the votes given for representative in congress; another similar statement of the votes given for electors of president and vice president; another, of the votes given for state senators, when the county alone does not constitute a senate district; another, of the votes given for members of the house of representatives, when the county alone does not constitute a representative district; another, [of] the votes given for county officers, and state senators and members of the house of rep-

Board of county canvassers, when and where to meet.

When inspector unable to attend to deliver statement to county clerk.

When canvassers may adjourn.

When messenger to be sent for statement of votes.

Board to meet on adjourned day.

To organize and canvass votes.

To make separate statements.

Forms of statements, laws of 1839, p. 359, &c.

representatives, when the county alone constitutes a senate district or representative district.

SEC. 8. In each of said statements, the whole number of votes given, the names of the candidates, and the number of votes given to each, shall be written in words at length; and each statement shall be certified as correct, and attested by the signatures of the chairman and secretary of the board; and a copy of each, thus certified and attested, shall be delivered to the county clerk, and recorded by him in a suitable book, to be provided by him and kept in his office.

SEC. 9. The board shall then determine the persons who have been, by the greatest number of votes, elected to the several county offices, and members of the house of representatives and state senators, respectively, when the county alone constitutes a senate or representative district; and such determination shall be certified and attested by the chairman and secretary of the board, and be annexed to the statement of votes given for such officers respectively, and shall be recorded with such statement by the county clerk.

SEC. 10. The said board shall make a duplicate statement of the votes given for state senators, when the county alone does not constitute a senate district, and deliver the same to the clerk of the county to be delivered by him to the senatorial district canvassers.

SEC. 11. The said board shall also make a duplicate statement of the votes given for representatives in the state legislature, when the county alone does not constitute a representative district, and deliver the same to the clerk of the county, to be delivered by him to the representative district canvassers.

SEC. 12. The county clerk shall record in his office all the statements and certificates that shall be delivered to him by the county board of canvassers, and shall provide at the expense of the county a suitable book for that purpose.

SEC. 13. He shall prepare and certify under his hand and seal of office, three copies of the statement of the votes given for representative in congress, which he shall severally seal up and direct as follows: One copy to the governor, one copy to the secretary of state, and one copy to the auditor general, and transmit the same by mail on or before the Tuesday next after the county canvass, when a general election has been held, and within five days after such canvass when a special election has been held; and he shall also prepare and certify under his hand and seal of office, two copies of the statement and certificate of votes given for governor and lieutenant governor, which he shall severally seal up and direct to the president of the senate, endorsed "election returns from the county of _____;" and shall separately enclose each copy in an envelope under seal, and shall direct one copy on the envelope to the governor, and the other copy to the secretary of state, and transmit the same by mail, on or before the Tuesday next after the county canvass when a general election has been held.

SEC. 14. He shall also prepare as many certified copies of each certificate of the determination of the board of county canvassers, as there are persons declared in such certificate to be elected, and shall without delay deliver one of such copies to each person so elected.

SEC. 15. Such clerk shall also, within thirty days after a general election, transmit to the secretary of state a list of the members of the house of representatives elected in the county, and a list of all the county officers elected in such county at such election.

TITLE II. CHAPTER 7.

What statements to contain and to whom delivered.

To be recorded, &c.

Determination by the board.

Duplicate statements to be made and delivered to clerk.

Duplicate statement of votes for representatives, &c.

County clerk to record statements.

Clerk to make & certify and transmit three copies of statement of votes for representative in congress, and 2 copies do. for governor, &c.

Const. of Mich. article 5 §4.

Clerk to prepare and deliver certified copies of determination to persons elected.

List of members and county officers to be transmitted by clerk to secretary of state.

**TITLE II.
CHAPTER 7.**

Statement of
votes for electors
of president &c.,
how to be trans-
mitted.

Sec. 16. Each county clerk, immediately after he shall receive from the board of county canvassers a statement of the votes given for electors of president and vice president, shall make out three copies thereof, and certify the same under his hand and seal of office to be true copies, and shall send by mail, one to the governor, and one to the secretary of state, and shall deliver the other to the special messenger hereinafter mentioned.

Certain boards
of canvassers to
appoint messenger,
&c.

Sec. 17. Each of the boards of county canvassers in the counties of Berrien, Van Buren, Allegan, Ottawa, Saginaw, and Chippewa, when there shall have been an election for electors of president and vice president, shall, immediately after closing the canvass, appoint some suitable person as a special messenger to carry copies of the statements of votes given for such electors, to the secretary of state, as hereinafter directed.

Duty of messenger
appointed in
Berrien.

Sec. 18. The messenger appointed by the board of canvassers in the county of Berrien, shall forthwith after his appointment, call upon the several county clerks in the counties of Berrien, Cass, St. Joseph, Branch, Hilldale, Lenawee, and Monroe, and obtain copies of the statements of votes given in those counties respectively for electors of president and vice president, and without delay carry and deliver them to the secretary of state.

Duty of messenger
appointed in
Van Buren.

Sec. 19. The messenger appointed by such board in the county of Van Buren, shall forthwith after his appointment, call upon the several county clerks in the counties of Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw and Wayne, and obtain copies of such statements of votes given in those counties respectively, and without delay carry and deliver them to the secretary of state.

Duty of messenger
appointed in
Allegan.

Sec. 20. The messenger appointed by such board, in the county of Allegan, shall forthwith after his appointment, call upon the several county clerks in the counties of Allegan, Barry, Eaton, Ingham, Livingston and Oakland and obtain copies of such statements of votes given in those counties respectively, and without delay carry and deliver them to the secretary of state.

Duty of messenger
appointed in
Ottawa.

Sec. 21. The messenger appointed by such board in the county of Ottawa, shall forthwith after his appointment, call upon the several county clerks in the counties of Ottawa, Kent, Ionia, Clinton and Shiawassee, and if there shall hereafter be any counties organized north of, and adjoining those last mentioned, he shall call upon the clerks of such counties also, and obtain copies of such statements of votes given in those counties respectively, and without delay carry and deliver them to the secretary of state.

Duty of messenger
appointed in
Saginaw.

Sec. 22. The messenger appointed by such board in the county of Saginaw, shall forthwith after his appointment, call upon the several county clerks in the counties of Saginaw, Genesee, Lapeer, St. Clair and Macomb, and if there shall be any counties organized north of, and adjoining those last mentioned, he shall call upon the clerks of such counties also, and obtain copies of such statements of votes given in those counties respectively, and without delay carry and deliver them to the secretary of state.

Duty of messenger
appointed in
Chippewa.

Sec. 23. The messenger appointed by such board in the county of Chippewa, shall forthwith after his appointment, call upon the clerks of the counties of Chippewa and Mackinaw, and if there shall be any counties organized within the territory now embraced in, or annexed to either of said last mentioned counties, he shall call upon the clerks

of such counties also, and obtain copies of such statements of votes given in those counties respectively, and without delay carry and deliver them to the secretary of state.

Compensation of messengers.

SEC. 24. The messengers aforesaid shall receive for their services, such compensation as the auditor general shall deem reasonable, not exceeding twenty cents a mile for travelling to the office of the secretary of state, to be audited by the auditor general on the certificate of said secretary that the services have been performed, and paid out of the state treasury.

Votes for and against amendments to constitution, how taken, canvassed, &c.

SEC. 25. Whenever any amendment shall have been proposed to the constitution, and agreed to and submitted to the people pursuant to the provisions of the thirteenth article of the constitution, if the vote thereon shall be required to be taken at the general election, the votes of the electors for and against such amendment shall be taken, canvassed, certified and recorded, and certified copies of the statements thereof shall be made and transmitted by the several county clerks to the governor, secretary of state, and auditor general, at the same time, and in the same manner as the votes for representatives in congress are by law required to be taken and canvassed, and statements thereof to be certified, recorded, and transmitted.

CHAPTER 8.

OF THE DISTRICT CANVASS.

SECTION 1. In each election district, for the election of representatives or senators in the state legislature, the limits of which shall be greater than those of a county, there shall be a board of district canvassers, and the clerks of the several counties within the district, the associate judges of the circuit court, and the sheriff of the county in which the meetings of the board are to be held, shall constitute such board.

District canvassers.

SEC. 2. Any three of said canvassers shall be a quorum for the transaction of the business of said board; and in case there shall not be three of the members of such board present at any such meeting, the judge of probate or register of deeds of the county where any such meeting is appointed to be held, or both of them, may act as members of such board, and with the other members in attendance, shall form a board of not less than three in number.

Quorum of board

SEC. 3. The board shall meet in the district for the election of representatives in the state legislature, on the Tuesday next after the day on which the county canvass is appointed to be made, and in districts for the election of senators, on the third Tuesday after the county canvass, at the office of the clerk of the county in such district having the greatest number of inhabitants according to the last preceding census.

Times and places of meeting.

1841, p. 190.

SEC. 4. If either of the county clerks shall be unable to attend such canvass on the day appointed therefor, he shall, on or before that day, cause to be delivered at the office of the clerk of the county in which such meeting is to be held, the original statement of votes given in his county for the officers to be elected in such district, which statement shall be laid before said board,

If county clerk unable to attend, to deliver statement.

1841, p. 190.

**TITLE II.
CHAPTER 9.**

Proceeding of
canvassers.

Board to deter-
mine persons
elected, &c.

Duty of county
clerk in relation
to statements, &c

SEC. 5. The canvassers shall then proceed to examine the statements of the votes given in the several counties in the district, and ascertain and determine what persons have been elected, and to what offices, and shall draw up a statement thereof in words at length, which statement shall contain the whole number of votes given in the district for each office, and the names of the persons to whom such votes were given; and such statement shall be certified to be correct, and be subscribed by the said canvassers.

SEC. 6. The canvassers shall then determine the persons elected to the several offices within the district, as shall appear by such statement, and shall certify such determination under their hands, and annex the same to their said statement, and deliver the same to the clerk of the county in which their meeting shall be held, who shall file the same in his office; and said board shall cause a copy of such statement and certificate to be forthwith published in some newspaper printed in the district.

SEC. 7. The county clerk by whom the said statement and certificate thereto annexed shall be filed, shall, without delay, transmit by mail to the secretary of state, a copy of such statement and certificate of determination, certified by him under his hand and seal of office; and he shall also, without delay, prepare and certify as many copies of such certificate of determination, as there are persons stated therein to have been elected, and cause one of said copies to be delivered to each person so determined to be elected.

CHAPTER 9.

OF THE STATE CANVASS.

State canvassers

SECTION 1. The secretary of state, the auditor general and the state treasurer shall be the board of state canvassers, any two of whom shall be a quorum for the transaction of business; and if only one of said officers shall attend on the day appointed for a meeting of the board, the attorney general, on being notified by the officer so attending, shall, without delay, attend with such officer, and with him shall form the board.

Secretary of state
to record state-
ments sent him.

SEC. 2. The secretary of state, on the receipt of the certified copies of the statements of votes given in the several counties, directed by law to be sent to him by the county clerks, shall record the same in a suitable book to be kept by him for that purpose.

When secretary
to call on gover-
nor for statement.

SEC. 3. If, from any county clerk no such statement, other than of the votes given for electors of president and vice-president, shall have been received by the secretary of state on or before the second Monday of December next after the general election, and on or before the thirtieth day after a special election, he shall call upon the governor and receive from him the statement from such county clerk, if the governor shall have received one.

When secretary
shall send special
messenger to ob-
tain statement.

SEC. 4. If, from any county clerk, neither the governor, the secretary of state, nor the auditor general, shall have received such statement by the day last mentioned, the secretary of state shall forthwith send a special messenger to obtain such statements and certificates from such county clerk; and such clerk shall immediately, on demand being

made by such messenger at his office, make out and deliver to him the statements and certificates required.

**TITLE II.
CHAPTER 9.**

SEC. 5. For the purpose of canvassing and ascertaining the result of elections other than for electors of president and vice-president, the secretary of state shall appoint a meeting of the state canvassers to be held at his office on or before the fifteenth day of December next after a general election, and within forty days after a special election, and shall notify the other members of the board accordingly.

Secretary to appoint meeting of the board, &c.

SEC. 6. The said board of canvassers, when formed as aforesaid, shall proceed to examine the statements received by the secretary of state, of the votes given in the several counties, and make a statement of the whole number of votes given for the office of representative in congress in each congressional district; which statement shall show the names of the persons to whom such votes shall have been given for said office, and the whole number of votes given to each.

Board to examine and make statement of votes for representative in congress.

1843, p. 37.

SEC. 7. The said canvassers shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such office, and make and subscribe on such statement a certificate of such determination, and deliver the same to the secretary of state.

Canvassers to certify statement and determine the persons elected.

SEC. 8. The said board of canvassers shall have power to adjourn from day to day, for a term not exceeding five days.

Adjournments.

SEC. 9. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination so made and delivered to him by the canvassers, and shall, without delay, make out and deliver to each of the persons thereby declared to be elected, a copy of such determination, certified by him under his seal of office; and shall also forthwith cause a copy of such certified statement and determination to be published in the state paper.

Secretary to record statement of canvassers, &c., and cause same to be published.

SEC. 10. For the purpose of canvassing and ascertaining the votes given for electors of president and vice president, said board shall meet on the Wednesday next after the third Monday of November, or on such other day before that time as the secretary of state shall appoint; and the powers, duties, and proceedings of said board, and of the secretary of state, in examining, ascertaining, determining, certifying and recording the votes and results of the election of such electors, shall be in all respects, as near as may be, as hereinbefore provided in relation to the examining, ascertaining, determining, certifying, and recording the votes and results of the election of representatives in congress.

Votes for electors of president, &c., when and how canvassed.

SEC. 11. The secretary of state shall, without delay, cause a copy of the certified determination of the board of state canvassers, declaring the persons elected as such electors, to be transmitted and delivered by special messengers or otherwise, to each of the persons so declared to be elected, which copies shall be certified under his hand and seal of office.

Certified copy of determination to be transmitted to persons elected.

SEC. 12. For the purpose of canvassing and ascertaining the result of the vote taken at any general election, upon any proposed amendment to the constitution, the secretary of state shall appoint a meeting of the state canvassers to be held at his office, on or before the fifteenth day of December; at which meeting the said secretary shall lay before the board the statements received by him of the votes given in the several counties for and against such amendment.

State canvassers to meet and receive statement of votes on amendment to constitution.

**TITLE II.
CHAPTER 10.**

Board to ascertain and determine result.

SEC. 13. The board shall then proceed to examine such statements and to ascertain and determine the result, and shall make and certify under their hands, a statement of the whole number of votes given for, and the whole number of votes given against such amendment; and they shall thereupon determine whether such amendment has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination, and deliver the same to the secretary of state.

Determination to be recorded by secretary, and published with laws.

SEC. 14. The secretary of state shall record in his office, in a book to be kept by him for that purpose, such certified statement and determination; and if it shall appear that such amendment has been approved and ratified as aforesaid, he shall also record such determination in the book in which the original acts of the legislature are recorded, and shall cause the same to be published with the laws enacted by the legislature at the next succeeding session thereof.

CHAPTER 10.

MISCELLANEOUS PROVISIONS RELATING TO ELECTIONS.

Unorganized counties.

SECTION 1. Unorganized counties, with other parts of the state which may be attached to any organized county for judicial purposes, unless otherwise provided, shall be considered as a part of such organized county for all purposes concerning the election of officers who may be elected at the general or special election.

Oath of clerks and inspectors of elections.

SEC. 2. The oath directed in this title to be taken by persons chosen to be inspectors, or appointed clerks of elections, shall be in the form prescribed in the twelfth article of the constitution of this state.

Compensation of county canvassers, &c.

SEC. 3. Each county canvasser, sheriff and county clerk, shall receive such reasonable compensation for his services while employed in the business of elections for county officers, as shall be allowed by the board of supervisors, or county auditors, to be paid by the county.

District canvassers, &c., how paid.

SEC. 4. Each district canvasser, county clerk, or other person employed in canvassing and returning the result of elections required by law to be certified by district canvassers, shall receive such compensation as the auditor general shall deem reasonable, to be paid out of the state treasury.

Civil process, when not to be served.

SEC. 5. During the day on which any election shall be held, pursuant to the provisions of law, no civil process shall be served on any elector entitled to vote at such election.

Term of office when elected to fill vacancy.

SEC. 6. When any person shall be elected to fill a vacancy in any elective office, he shall hold the same only during the unexpired portion of the regular term limited to such office, and until his successor shall be elected and qualified.

CHAPTER 11.

TITLE II.
CHAPTER 11.OF THE ELECTION OF REPRESENTATIVES IN CONGRESS, ELECTORS OF
PRESIDENT AND VICE PRESIDENT, AND SENATORS IN CONGRESS.*Of the Election of Representatives in Congress.*

SECTION 1. A representative in the congress of the United States, shall be chosen in each of the congressional districts into which the state is or shall be divided, at the general election in the year one thousand eight hundred and forty-six, and every two years thereafter.

Representatives
in congress, when
to be elected.
1843, p. 37.

SEC. 2. If a representative in congress shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state; and if a vacancy shall occur by death or otherwise, in the office of representative in congress, the clerk of the county in which such representative shall have resided at the time of his election, shall without delay transmit a notice of such vacancy to the secretary of state.

In case of death,
or resignation,
clerk to notify
secretary of state

Of the election of Electors of President and Vice President,

SEC. 3. At the general election next preceding the choice of president and vice president of the United States, there shall be elected by a general ticket, as many electors of president and vice president as this state may be entitled to elect of senators and representatives in congress.

When electors
of president &c.
to be elected.

SEC. 4. The electors of president and vice president shall convene at the capitol of this state, on the first Wednesday of December, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, or neglect to attend by the hour of twelve o'clock at noon of that day, the elector or electors present shall proceed to fill such vacancy by ballot and plurality of votes; and when all the electors shall appear, or vacancies shall be filled as above provided, they shall proceed to perform the duties of such electors required by the constitution and laws of the United States.

Electors when to
meet and per-
form their duties.

12th amendment
to constitution of
United States.

Act of congress
of 1st March,
1732.

SEC. 5. The secretary of state shall prepare three lists of the names of the electors; procure thereto the signature of the governor, affix the seal of the state to the same, and deliver such certificates thus signed and sealed, to one of the electors, on or before the said first Wednesday in December.

Credentials of
electors.

Of the election of Senators in Congress.

SEC. 6. On the first Tuesday after the second Monday of January next before the expiration of the time for which any senator was elected to represent this state in congress, if the legislature shall be then in session, and if not, then within ten days after a quorum of both houses shall be assembled at the then next meeting of the legislature, an election shall be held for a senator in congress, at the place where the legislature shall be then sitting, which election may be continued from day to day, until such senator shall be elected.

When senator in
congress to be
elected.

SEC. 7. Whenever the seat of any such senator shall become vacant before the expiration of the term for which he was elected, another senator shall be elected in his place, within ten days after the legislature shall have notice of such vacancy, at the place where it shall be then sitting.

Vacancy to be
filled.

SEC. 8. Such election shall be made in the following manner: The

Manner of con-
ducting election.

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senate and house of representatives shall each openly nominate one person for the office of senator in congress; after which they shall immediately meet, and if they shall agree in their nomination, the person so nominated shall be deemed elected; if they shall disagree, the election shall be made by a joint vote of the senators and members of the house of representatives, and a majority of the votes given upon such joint vote, shall be necessary to a choice.

Evidence of election.

SEC. 9. Whenever any senator shall be chosen as aforesaid, copies of the resolutions of the senate and house of representatives, certifying such choice, signed by the president of the senate and speaker of the house of representatives, shall be thereupon delivered to the person so chosen senator, as evidence of such election.

TITLE III.

TITLE III.
CHAPTER 12.

OF CERTAIN STATE OFFICERS; OF COUNTIES AND COUNTY OFFICERS;
AND OF RESIGNATIONS, VACANCIES, AND REMOVALS FROM OFFICE,
AND SUPPLYING VACANCIES.

Chapter 12. Of certain State officers.

Chapter 13. Of Counties.

Chapter 14. Of County Officers.

Chapter 15. Of Resignations, Vacancies and Removals, and supplying Vacancies.

CHAPTER 12.

OF CERTAIN STATE OFFICERS.

The Governor.

SECTION 1. The governor shall receive an annual salary of one thousand five hundred dollars, to be paid quarter yearly, and shall not be entitled to any fees or perquisites of office in addition to his salary.

Governor's salary.
Const. art. 5, §18.

SEC. 2. Whenever by the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor, the salary of the governor shall cease, and the same shall be received by the lieutenant governor, as a full compensation for his services until such disability shall cease, or the vacancy be filled.

When governor's salary to cease and be received by lieutenant governor.
1840, p. 128.

SEC. 3. The governor may, at the commencement of each session of the legislature, appoint a private secretary, who shall hold his office during the session, unless sooner removed by the governor, and who shall receive such compensation as the legislature may direct, not exceeding two dollars a day for the time he is employed.

Private secretary
1840, p. 126, §4—
id. p. 128.

The Secretary of State.

SEC. 4. The secretary of state shall have the custody of the great seal of the state, and copies of all records and papers in his office, certified by him, and authenticated by the great seal of the state, shall be evidence in all cases equally, and with the like effect, as the originals.

Secretary of state to have custody of great seal, &c.
Const. art. 7.

SEC. 5. The secretary of state may appoint a deputy, with the approbation of the governor, and revoke such appointment at pleasure; and whenever the secretary of state shall, by reason of sickness, absence, or other cause, be disabled from executing the duties of his office, his deputy, duly appointed, shall execute the duties thereof until such disability be removed, or until a secretary shall be appointed, and such deputy shall receive an annual salary of five hundred dollars, payable quarter yearly.

Deputy secretary, his powers, duties and compensation.

SEC. 6. The secretary shall receive an annual salary of eight hundred dollars, payable quarter yearly; and also such fees and perqui-

Salary of secretary.

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CHAPTER 12.**

sites of office as shall be allowed him by law; and he shall keep his office at the capitol.

The State Treasurer.

State treasurer
to give bond.

Const., art. 7, § 2.

SEC. 7. The state treasurer, before entering upon the duties of his office, shall give bond to the people of this state in the sum of one hundred thousand dollars, with three or more sureties, to be approved by the auditor general and the attorney general, which bond shall be filed in the office of the secretary of state.

Condition of
bond.

SEC. 8. The condition of such bond shall be, in substance, that the treasurer and all persons employed in his office, shall faithfully discharge their respective duties and trusts, and that the said treasurer shall use all necessary and reasonable diligence and care in the safe keeping and lawful disposal of all sums of money, books, bonds, notes, papers, and all other things appertaining to said office, and which have or shall come to his hands, or to the hands of any person or persons employed by him; and that the said treasurer shall, upon reasonable notice, render a true account in the premises whenever he shall be thereunto required by any provision of law in that behalf, or by the senate or house of representatives, and shall deliver over to his successor in said office, or to any other person authorized by law to receive the same, all moneys, books, bonds, notes, papers, and all other things belonging to said office; and that all balances which shall appear against him, shall be forthwith paid into the treasury of the state.

Deputy treasurer,
his powers,
duties and compensation.

1840, p. 223, § 4,
1844, p. 77, § 1.

SEC. 9. The treasurer may appoint a deputy, for whose acts he shall be responsible, and may revoke such appointment at pleasure; and such deputy may execute the duties of the office during the sickness or necessary absence of the treasurer, and shall receive an annual salary at the rate of seven hundred dollars, payable quarter yearly.

Proceedings on
death, &c. of
treasurer.

SEC. 10. Upon the death or resignation of the treasurer, or upon a vacancy in that office from any other cause, the secretary of state, with two suitable persons to be appointed by warrant under the hand and seal of the governor, shall repair to the place or places where the moneys, papers and other things belonging to the treasury are usually kept, and having previously given notice to the late treasurer, his heirs, executors, or administrators, and to his sureties, or one of them, or to such of the said persons as may be found in the state, to attend them, shall seal up and secure, in their presence, if they shall attend, all such moneys, papers, and other things supposed to belong to the state.

Id.

SEC. 11. They shall then give such representatives or sureties, if required by them, a true list of all boxes and packages so sealed up and secured, and shall note on such list the places wherein the same are deposited; whereupon, as soon as it can be conveniently done, and after notice to the parties mentioned in the preceding section, they shall cause the said boxes and packages to be examined, and a true inventory to be taken of the said moneys, and of all bonds, notes, securities, books, and other things appertaining to said office, which shall be required by such late treasurer, or his representatives, or sureties, or either of them.

Id.

SEC. 12. A copy of such inventory shall be deposited by them in the secretary's office, and any copies that may be required shall be given to any of the parties mentioned in the preceding section; and



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they shall safely keep all moneys and other effects mentioned as aforesaid, until another treasurer shall be appointed, to whom, when qualified, they shall deliver over the same, taking duplicate receipts therefor, one of which receipts shall be deposited with the secretary, and the other shall be delivered to the said late treasurer, or his legal representatives or sureties, or one of them.

SEC. 13. The treasurer shall, on the first Tuesday of each month, and at such other times as the auditor general may require, exhibit to the said auditor general, for his examination, a true account of his receipts, and of moneys paid out by him as treasurer.

Treasurer to exhibit accounts to auditor general.

SEC. 14. The treasurer shall make to the legislature, at its annual session in January in each year, and at such other times as he shall be required by either branch of the legislature, an exact statement of the balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding year; which annual statement he shall cause to be published with the laws of the session at which the same shall have been made.

Statement to be made to legislature and published with laws.

SEC. 15. He shall keep his office at the seat of government, and shall receive an annual salary of one thousand dollars, payable quarterly, in full compensation for all his services.

Where to keep office.
His salary.

SEC. 16. The fiscal year for the treasury of this state, shall commence on the first day of December in each year, and close on the thirtieth day of November in the succeeding year.

Fiscal year.
1839, p. 116.

The Auditor General.

SEC. 17. The auditor general shall state all accounts, and examine and liquidate the claims of all persons against the state, in cases provided for by law, and give his warrant therefor; and in cases of claims against the state which cannot be liquidated by him, or by the board of state auditors, without further legislative provision, he shall examine and report the same, with the facts relating thereto, to the legislature, with his opinion thereon.

Auditor general to state accounts, &c.

SEC. 18. He shall also examine, adjust and settle the claims of all persons indebted to the state; and when there shall be any account liquidated showing any amount to be due to any person, for the payment whereof an appropriation shall have been made by law, he shall draw his warrant on the treasury therefor.

To settle claims and draw warrants on treasurer.

SEC. 19. No moneys shall be paid out of the state treasury, except on the warrant of the auditor general; and all receipts for money paid to the treasurer, shall be taken to the auditor general, who shall countersign the same, and enter them in the proper book in his office for that purpose, to the credit of the person by whom such payment shall be made, and no such receipt, unless countersigned, shall be evidence of such payment.

Moneys not to be paid out of treasury except on auditor's warrant

Receipts to be countersigned, &c.

SEC. 20. The auditor general shall keep an account in proper books to be provided by him for that purpose, between the state and the treasurer, charging therein to the treasurer the balance in the treasury, and all moneys received by him, and giving him credit therein on the first Tuesday in every month, for all warrants paid by him, which warrants shall thereupon be cancelled by the auditor general; and he shall also keep an account of all outstanding warrants not paid by the treasurer.

Accounts between treasurer and state.

SEC. 21. He shall, on the first Tuesday in each month, and at any other time when he may deem it necessary, examine the treasurer's account

Auditor to examine treasurer's accounts, and report irregularity, &c.

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of moneys received, and of moneys paid out by him; and if, on examining such account, he shall discover any irregularity or deficiency therein, he shall, as soon thereafter as may be, report in writing the nature and extent of such irregularity or deficiency to the governor, so that the same may be submitted to the legislature, if, in the opinion of the governor, the interests of the state shall require it.

Statement of the fund: and revenue of the state. &c.

SEC. 22. The auditor general shall make to the legislature, at its session in January in each year, and at such other times as he shall be required by either branch of the legislature, a complete statement of the funds of the state, and of the revenue thereof, and of the amount of salaries of the officers of the government, and of other contingent expenses, and other appropriations for the year preceding, and recommend such improvements in the financial system of the state as he may deem expedient.

1838, p. 292.

To transmit collection laws.

SEC. 23. He shall, from time to time, transmit copies of all laws that may be made relative to the collection of the state revenue, as soon as the same shall be published in the newspapers in which they are authorized to be printed, to the officers concerned in carrying the same into effect.

Instructions to certain officers.

SEC. 24. He shall also draw up instructions for the government of the officers concerned in the collection of the revenue, in the premises; which instructions, certified by the attorney general to be in accordance with law, shall be binding upon such officers; and the publishers of the laws of this state shall publish such instructions, and furnish the auditor general with so many copies thereof as he may deem necessary.

Where to keep his office.
His salary.

SEC. 25. The auditor general shall keep his office at the seat of government; and shall receive an annual salary of one thousand dollars, payable quarter yearly, in full for all his services.

Deputy auditor general, his powers and compensation.

SEC. 26. The auditor general may appoint a deputy, for whose acts he shall be responsible, and may revoke such appointment at pleasure; and such deputy may execute the duties of the office during the sickness or necessary absence of the auditor general, and shall receive an annual salary at the rate of seven hundred dollars, payable quarter yearly.

1840, p. 233, § 4.

Clerks and their compensation.

SEC. 27. He may also employ so many regular clerks as may be necessary, not exceeding two, at an annual salary of six hundred dollars, payable quarter yearly, and so many extra clerks as may from time to time be necessary, at a salary not exceeding four hundred dollars a year, payable monthly, or otherwise, as the auditor general may think proper.

1844, p. 77, § 1.

The Attorney General.

Duties of attorney general.

SEC. 28. The attorney general shall prosecute and defend all actions in the supreme court, in which the state shall be interested, or a party; and shall also, when requested by the governor or either branch of the legislature, appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

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SEC. 29. It shall be the duty of the attorney general, at the request of the governor, the secretary of state, the treasurer or the auditor general, to prosecute and defend all suits relating to matters connected with their departments.

SEC. 30. The attorney general shall consult with and advise the

prosecuting attorneys, when requested by them, in all matters pertaining to the duties of their offices; and he shall make and submit to the legislature, at the commencement of its annual session, a report of all official business done by him during the year preceding, specifying the suits to which he has attended, the number of persons prosecuted, the crimes for which, and the counties where such prosecutions were had, the results thereof, and the punishments awarded.

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To advise prosecuting attorneys, and make report to legislature.

SEC. 31. The attorney general shall include in his annual report, an abstract of the annual reports of the several prosecuting attorneys.

Abstract of reports of prosecuting attorneys.

SEC. 32. It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer, or any other state officer; and also to notify the county treasurer of the proper county, of the neglect or refusal of any prosecuting attorney to make the annual report to the attorney general required of him by law.

To give opinion when required by governor, &c.

To notify neglect of prosecuting attorneys.

1841, p. 15, §2.

SEC. 33. All moneys received by the attorney general, for debts due, or penalties forfeited to the people of this state, shall be paid by him, immediately after the receipt thereof, into the treasury.

To pay over moneys.

SEC. 34. The attorney general shall keep, in proper books to be provided for that purpose at the expense of the state, a register of all actions or demands prosecuted or defended by him in behalf of the people of this state, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office.

To keep register of demands, &c. and deliver the same to successor.

SEC. 35. The attorney general shall receive an annual salary of five hundred dollars, payable quarter yearly, and such taxable costs as shall be allowed by law, which shall be in full satisfaction for all his services; but the state shall not be in any way chargeable for such taxable costs.

Compensation.

1844, p. 77, §2.

Official Oaths and Bonds of State Officers.

SEC. 36. The state officers named in this chapter, the lieutenant governor, acting commissioner of internal improvements, deputy secretary of state, deputy auditor general, deputy treasurer, and secretary of the board of internal improvements, shall each, before entering on the execution of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term of service for which he was elected or appointed, take and subscribe the oath of office prescribed in the twelfth article of the constitution of this state, and deposit the same, with his bond, in case a bond be required of him by law, with the secretary of state, who shall file and preserve the same in his office.

Certain officers to file oath of office, &c., with secretary of state.

SEC. 37. Such oath may be taken and subscribed before any justice of the supreme court, a judge of any court of record, the secretary of state, the attorney general, any mayor of a city, or the clerk of any court of record.

Who may administer oaths.

SEC. 38. If either of said officers shall neglect to deposit his oath or bond, according to the provisions of section thirty-five (*thirty-six*) of this chapter, and shall neglect to give the notice specified in the next section, or if he shall enter upon the execution of his office before he shall have so deposited his said oath or bond, he shall in either case, forfeit and pay to [the people of] this state, one hundred and fifty dollars.

Penalty for neglect.

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No penalty imposed if notice given.

SEC. 39. No penalty shall attach on account of any neglect to deposite such oath or bond as aforesaid, in case such officer, before entering upon the execution of his office, and within the time limited for filing such oath or bond, shall give notice in writing to the officer or officers having the power by law to order an election to fill such office, or to fill the same by appointment, or, in case of an appointment by the governor by and with the advice and consent of the senate, to the governor, stating therein that he declines accepting such office.

Annual Reports of State Officers.

Annual reports to be printed.

SEC. 40. It shall be the duty of the several officers and boards of officers of this state, from whom annual reports are required by law to be made to the legislature, to cause their respective reports to be placed in the hands of the printer of the laws of this state, or of such printer as the secretary of state shall employ, as soon as practicable after the close of the fiscal year; and such report shall be printed, and ready to be submitted to the legislature immediately upon the permanent organization of the two houses.

1839, 116, 117.

Proof sheets by whom to be examined and corrected.

SEC. 41. It shall be the duty of each of said officers to examine and correct the proof sheets, and superintend the publication of his report; and each of said boards shall appoint one of its members, or some other suitable person, who shall superintend the publication of its report.

Number of copies of reports.

SEC. 42. Of each of the said reports of the treasurer, the auditor general, and the board of internal improvements, two hundred copies shall be printed and furnished to the senate, and three hundred copies to the house of representatives; of the report of the superintendent of public instruction, four hundred copies shall be printed and furnished to the senate, and six hundred copies to the house of representatives; and of each of the said reports of the several other state officers required to make such reports, one hundred copies shall be printed and furnished to the senate, and one hundred and fifty copies to the house of representatives.

Additional copies of reports, &c., to be printed for binding.

SEC. 43. There shall also be printed at the same time, five hundred additional copies of each of said reports, which shall be preserved for binding with the other joint documents of the session of the legislature to which they are made.

Board of State Auditors.

Board of state auditors, their powers and duties.

SEC. 44. The secretary of state, the state treasurer and the attorney general, shall constitute a board of state auditors; and as such, they shall have power, and it shall be their duty, annually to enter into a full settlement and final adjustment with every officer and agent of the state, who may be authorized to receive, keep, or disburse any moneys belonging to this state, of all and singular debits, credits, claims and demands of whatever kind or description, between such officer or agent and this state; *Provided*, That in all settlements with the state treasurer, the auditor general shall be a member of said board for that purpose, to the exclusion of said treasurer.

1842, p. 13, §2.

When annual settlement of accounts to be made.

SEC. 45. The annual settlement of the accounts of the several receiving or disbursing officers or agents of this state, before the board of state auditors, shall be had as soon after the first day of December in each year, as the accounts of said officers on the books of the

auditor general, can be closed for the preceding fiscal year; of which time the auditor general shall give notice to the treasurer, who shall thereupon require said several officers and agents to appear before said board at his office, on some day to be designated by him, of which time he shall also notify the other members of the board.

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Notice to be given.
1844, p. 31, § 1.

SEC. 46. As soon as practicable after the expiration of the official term, or resignation of any such receiving or disbursing officer or agent, the auditor general shall give notice to the board of auditors, and to such officer or agent, to meet at the office of the state treasurer, for the purpose of making a full and final settlement of the accounts of such officer or agent, and the said board shall proceed thereon in the same manner as is provided in relation to the annual settlement of said accounts.

Settlement of accounts of officers resigning, &c.
1844, p. 32, § 2.

SEC. 47. If upon a balance being struck on any settlement made in pursuance of this chapter, it shall appear that the state is indebted to the party with whom such settlement is made, he shall be entitled to a warrant upon the treasurer therefor forthwith; but if it shall appear that such party is indebted to the state, said board shall demand immediate payment of the amount due; and if for any cause, such payment is not immediately made, the fact shall be entered upon the books of the treasury, and the treasurer shall give notice thereof to the auditor general, and the auditor general shall not thereafter draw any warrant in favor of such person upon the treasurer, until such payment be made.

When party entitled to warrant.

Proceeding when party is indebted to state.

1842, p. 14, § 3.

SEC. 48. The board of state auditors shall submit to the legislature annually, at the commencement of its session in January, a report of their doings during the year next preceding.

Annual report of state auditors.
1842, p. 15, § 5.

Of the State Library.

SEC. 49. The secretary of state shall have the charge and safe keeping of the state library, and shall from time to time make such regulations as may be necessary for the management, safety and improvement thereof, subject to the revision of the legislature; and such regulations shall prescribe suitable fines, penalties or forfeitures, for any injury done to, or any neglect to return, any books, maps or charts belonging to said library.

State library to be kept by secretary of state.

1837-8, p. 8.

SEC. 50. The state library shall be kept in the room in the capitol which it now occupies, until some other provision shall be made in reference thereto, and the members of both houses of the legislature, and the executive and judicial officers of the state, shall at all times have free access thereto, under such regulations as shall have been made by the secretary of state.

Where kept, and who have access to.

SEC. 51. The secretary of state shall make to the legislature, at the commencement of each annual session thereof, a detailed report of the condition of the library, setting forth the amount expended by virtue of any appropriation made for the contingent expenses or the enlargement of the library, the sums necessary to defray the contingent expenses for the support and preservation of the same; and all losses of, or injuries to, any of the books, maps or charts belonging to said library; and all such other matters as in his opinion may tend to the improvement and protection of the library and its appendages.

Secretary to report condition of library annually.

1837-8, p. 9, § 6.

Of the Adjutant General.

SEC. 52. An adjutant general for this state shall be appointed by

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CHAPTER 13.**

Adjutant general—
his rank and
term of office.

1844, p. 100, § 7.

Oath of office and
compensation.

1844, p. 100, § 7.

To make return
of militia to go-
vernor annually.

Other duties.

the governor, by and with the advice and consent of both branches of the legislature in joint convention, who shall be of the rank of brigadier general, and shall hold his office for two years, and until his successor shall be appointed and qualified.

SEC. 53. The adjutant general shall, before entering upon the duties of his office, and within twenty days after notice of his appointment, take the constitutional oath of office, and file the same with the secretary of state, and shall receive as a full compensation for all his services, the sum of three hundred dollars annually, payable quarter yearly.

SEC. 54. He shall, in each year, prepare a return of the militia of this state, exhibiting their full numerical strength, together with all the arms and military stores belonging to the state, designating the several kinds, condition and place of deposite, which return he shall deliver to the governor on or before the first day of December.

SEC. 55. The adjutant general shall perform all such other duties relating to the militia, arms and military stores of this state, as are required of him by law.

CHAPTER 13.

OF COUNTIES.

Boundaries of
counties.

SECTION 1. The boundaries of the several counties in this state, shall remain as now established, unless the same shall hereafter be changed by the legislature.

Rights, powers,
&c. of counties.

SEC. 2. All the rights, powers, duties, privileges and immunities of the several counties, shall remain as now established, until the same shall be altered by law.

For what purpo-
ses counties bod-
ies corporato.

SEC. 3. Each organized county shall be a body politic and corporate, for the following purposes, that is to say: to sue and be sued; to purchase and hold real and personal estate for the use of the county; to borrow money for the purpose of erecting and repairing county buildings, and for the building of bridges; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

Conveyances for
the benefit of
counties, their
force and effect.

SEC. 4. All real and personal estate, heretofore conveyed by any form of conveyance to the inhabitants of any county, or to the county treasurer, or the governor of the late territory of Michigan, or to any committee, trustees, or other persons, for the use and benefit of such county, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such counties by their respective corporate names.

How real estate
of county may
be conveyed.

SEC. 5. The board of supervisors of each county, or other public officers having the charge and management of the county lands, may, by their order of record, appoint one or more agents to sell any real estate of their county not donated for any special purpose, and all deeds made on behalf of such county, by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient to convey all the right, title, interest and estate which the county may then have in and to the land so conveyed.

*Common Jurisdiction of certain Counties.*TITLE III.
CHAPTER 13.

Common jurisdiction of Wayne and Monroe.

SEC. 6. The counties of Wayne and Monroe shall have jurisdiction, in common, of all offences committed on that part of lake Erie which lies within the limits of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, and in like manner, and to the same effect, as if such offence had been committed in any other part of either of said counties.

SEC. 7. All civil process from either of the counties of Wayne or Monroe, may run into, and be executed within and upon that part of lake Erie which lies within the limits of this state.

Common jurisdiction of Wayne Macomb and St. Clair.

SEC. 8. The counties of Wayne, Macomb and St. Clair, shall have jurisdiction, in common, of all offences committed on that part of lake St. Clair which lies within the limits of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if the offence had been committed in any part of either of said counties.

SEC. 9. All civil process from either of the counties of Wayne, Macomb or St. Clair, may run into, and be executed within and upon that part of lake St. Clair which lies within the limits of this state.

Common jurisdiction of Berrien, Van Buren, Allegan, Ottawa, and Mackinaw.

SEC. 10. The counties of Berrien, Van Buren, Allegan, Ottawa and Mackinaw, and such other counties as shall hereafter be organized upon the easterly shore of lake Michigan, shall have jurisdiction, in common, of all offences committed on that part of lake Michigan which lies within the limits of this state; and such offences may be heard and tried in either of said counties, in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if the offence had been committed in any part of either of said counties.

1841, p. 14, § 1.

SEC. 11. All civil process from either of the counties of Berrien, Van Buren, Allegan, Ottawa or Mackinaw, or from any such other counties as shall hereafter be organized upon the easterly shore of lake Michigan, may run into, and be executed within and upon that part of lake Michigan, which lies within the limits of this state.

Civil process from.

1841, p. 14, § 2.

SEC. 12. The counties of Saginaw, Mackinaw and St. Clair, and such other counties as may hereafter be organized upon the shore of lake Huron, shall have jurisdiction, in common, of all offences committed on that part of lake Huron which lies within the limits of this state; and such offences may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect, as if the offence had been committed in any part of either of said counties.

Common jurisdiction of Saginaw, Mackinaw and St. Clair.

SEC. 13. All civil process from either of the counties of Saginaw, Mackinaw, or St. Clair, or from such other counties as may hereafter be organized upon the shore of lake Huron, may run into, and be executed within and upon that part of lake Huron which lies within the limits of this state.

Civil process from.

SEC. 14. The county of Chippewa, and such other counties as may hereafter be organized upon the shore of lake Superior, shall have jurisdiction, in common, of all offences committed on that part of lake Superior which lies within the limits of this state; and such offences may be heard and tried in either of such counties in which legal process against the offender shall be first issued, in like manner, and to

Chippewa, &c.

TITLE III.
CHAPTER 13.
Civil process,
from.

the same effect, as if the offence had been committed in any part of either of said counties.

SEC. 15. All civil process from the county of Chippewa, or from such other counties as may hereafter be organized upon the shore of lake Superior, may run into, and be executed within and upon that part of lake Superior which lies within the limits of this state.

County Buildings.

Each county to
provide suitable
buildings.

SEC. 16. Each organized county shall, at its own proper expense, provide a suitable court house, and a suitable and sufficient jail, and fire-proof offices, and all other necessary public buildings, and keep the same in good repair.

Prison limits.

SEC. 17. The prison limits of each county, shall extend to all places within the boundaries of the county.

When county
shall reimburse
sheriff, &c.

SEC. 18. In case of the escape of any prisoner, by reason of the insufficiency of the jail, whereby the sheriff, or other officer performing the duties of sheriff, shall be made liable to any party at whose suit such prisoner was committed, the county shall re-imburse and pay all sums of money recovered of the sheriff or such other officer by such party, by reason of such escape.

Unorganized Counties.

Certain districts
annexed, to be
deemed part of
county.

SEC. 19. Unorganized counties and other districts, annexed, or hereafter to be annexed to any organized county for judicial purposes, shall, for every purpose, be deemed to be within the limits of the county to which they are or may be so annexed.

Division of Counties, &c.

Lands of coun-
ties on division.

SEC. 20. When a county seized of lands, shall be divided into two or more counties, or shall be altered in its limits, by annexing a part of its territory to any other county or counties, each county shall become seized to its own use, of such part of said lands as shall be included within its limits, as settled by such division or alteration.

Property, how
apportioned on
division.

SEC. 21. When a county possessed of, or entitled to money, rights, credits, things in action or personal property, shall be so divided or altered, or when any unorganized county or district annexed to any county for judicial purposes, shall be organized into a separate county, such money, rights, credits, things in action or personal property, shall be adjusted and apportioned, and a settlement thereof made between the counties interested therein, by the supervisors thereof, as to them or a majority of them shall appear to be just and equitable.

Supervisors to
meet for settle-
ment.

SEC. 22. The supervisors aforesaid shall meet for the purpose of such settlement, at such time as shall be prescribed by the law making such division or alteration; or if no time is prescribed by such law, at such time as the board of supervisors of either of the counties interested shall appoint, at the office of the treasurer of the county retaining the original name of the county so divided or altered.

Debts to be ap-
portioned.

SEC. 23. Debts owing by a county so divided or altered, shall be apportioned in the manner prescribed in section twenty-one of this chapter, and each county shall thereafter be charged therewith, according to such equitable apportionment.

Commissioners
to be appointed
if supervisors
cannot agree.

SEC. 24. In case of the division or alteration of a county as aforesaid, if the supervisors cannot agree upon a settlement, as provided in this

chapter, the supervisors of either of the counties interested may apply to the circuit court for any adjoining county, for the appointment of five judicious men residing within a county not interested, to be commissioners for the purpose of settling and determining the matters aforesaid between such counties : and upon such application, such circuit court shall appoint such commissioners for the purpose aforesaid.

SEC. 25. Such commissioners shall meet at such time as they may appoint, and after being duly sworn faithfully and impartially to perform their duties as such commissioners, shall proceed to examine into the merits of the matters aforesaid, and shall make such determination in relation thereto as to them, or a majority of them shall appear to be just and equitable; which determination shall be entered at length by the clerks of the respective counties so interested as aforesaid, upon the journals of the board of supervisors thereof, and shall be final and conclusive between such parties.

Commissioners to meet and make determination.

Of Legal Proceedings in favor of and against Counties..

SEC. 26. Whenever any controversy or cause of action shall exist, between any of the counties of this state, or between any county and an individual or individuals, such proceedings shall be had either in law or equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings between individuals and corporations.

Suits between counties, &c.

SEC. 27. In all such suits and proceedings, the name in which the county shall sue or be sued, shall be "The Board of Supervisors of the county of _____;" (the name of the county,) except in cases where other county officers shall be authorized by law to sue in their name of office, for the benefit of the county.

How counties to sue and be sued

SEC. 28. In all legal proceedings against the board of supervisors, the process shall be served on the chairman or clerk of the board; and whenever any such suit or proceeding shall be commenced, it shall be the duty of such chairman or clerk to notify the prosecuting attorney thereof, and to lay before the board of supervisors, at their next meeting, all the information he may have in regard to such suit or proceeding.

Process in proceedings against supervisors, on whom to be served. Duty of chairman, &c.

SEC. 29. On the trial of every action in which a county shall be interested, the electors and inhabitants of such county shall be competent witnesses and jurors.

Who competent witnesses and jurors.

SEC. 30. Any action in favor of a county, which, if prosecuted by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such county in like manner, before any such justice.

What actions may be prosecuted before a justice.

SEC. 31. In all suits and proceedings prosecuted by or against counties, or by or against county officers in their name of office, costs shall be recoverable as in like cases against individuals.

Costs.

SEC. 32. When a judgment shall be recovered against the board of supervisors, or against any county officer in an action prosecuted by or against him in his name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer to the person to whom the same shall have been adjudged, upon the delivery of a proper voucher therefor.

Proceedings to collect judgment against board of supervisors, &c.

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CHAPTER 14.

OF COUNTY OFFICERS.

Of the Board of Supervisors.

Meetings of supervisors.

SECTION 1. The supervisors of the several townships and wards in each of the counties of this state, shall meet annually in their respective counties for the despatch of business, as a board of supervisors. They may also hold special meetings when necessary, at such times and places as they may find convenient, and shall have power to adjourn from time to time as they may deem necessary.

Annual meeting of board, when and where held. 1842, p. 22, § 3, 1843, p. 68 § 21, 1844, p. 162, § 10,

SEC. 2. The annual meetings of the boards of supervisors shall be held on the second Monday of October in each year, at the court house in each county, if there be one, and if there be no court house in the county, then at the place where the last circuit court shall, or ought to have been held.

Powers of board.

SEC. 3. The board of supervisors of each county in this state, shall have power, at their annual meetings, or at any other legal meeting, excepting where some other provision is specially made by law,

1. To make such orders concerning the corporate property of the county, as they may deem expedient:

2. To examine, settle and allow all accounts chargeable against such county; and to examine and settle all accounts of the receipts and expenditures of the county; and all accounts against any county, shall be presented to, and settled by, the board of supervisors:

3. To provide for the erection and repairing of court houses, jails, poor houses, and all other necessary public buildings within, and for the use of the county:

1840, p. 161, § 1.

4. To require the county treasurer to cause to be insured, any or all the public buildings belonging to the county, in the name of said treasurer and his successors in office:

5. To borrow money for the purpose of erecting and completing the county buildings, and for the building of bridges within the county, in the cases provided for by law:

6. To represent the county, and to have the care of the county property, and the management and business of the county, in all cases where no other provision shall be made:

7. To direct the raising of such moneys as may be necessary to defray the county charges and expenses, and the necessary charges incident upon, or arising from the execution of their lawful authority: and,

8. To perform all other acts and duties which may be authorized and required by law.

Who supervisors in the city of Detroit. 1842, p. 22, § 2.

Quorum for business.

SEC. 4. The city of Detroit shall be entitled to one supervisor for each ward; and the assessor elected for each ward at the annual charter election of said city, shall be the supervisor of his ward.

SEC. 5. A majority of the supervisors of any county shall constitute a quorum for the transaction of business; and all questions which shall arise at their meetings shall be determined by the votes of a majority of the supervisors present.

Meetings to be public.

SEC. 6. The boards of supervisors shall sit with open doors, and all persons may attend their meetings.

Chairman of board.

SEC. 7. They shall, at their first meeting in each year, choose one of their number as chairman, who shall preside at such meeting, and

at all other meetings, during the year, if present; but in case of his absence from any meeting, the members present shall choose one of their number as a temporary chairman.

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SEC. 8. Every chairman shall have power to administer an oath to any person, concerning any matter submitted to the board, or connected with their powers or duties.

Chairman may administer oaths.

SEC. 9. Each board of supervisors may borrow, when necessary for the erection of public buildings of the county, or the building of bridges therein, any sum of money not exceeding fifteen thousand dollars in all, at an interest not exceeding seven per cent. per annum, and for a term not less than five, nor more than fifteen years; or may raise the same by a tax; but no board of supervisors shall borrow or raise by a tax for such purposes more than two thousand dollars, unless authorized by a majority of the electors, as is provided in the two next succeeding sections, or by special provision by law.

Supervisors may borrow money for erection of buildings, &c.

1845, p. 54.

SEC. 10. Whenever the board of supervisors of any county shall, by a vote or resolution, determine that it is necessary to borrow or raise by a tax a greater sum than two thousand dollars for the purposes mentioned in the preceding section, they shall cause a notice thereof to be posted up in three of the most public places in each township within the county, at least thirty days before the next annual election or township meeting, specifying the amount proposed to be borrowed or raised by a tax, and the purpose for which the same is to be expended, and that a vote of the qualified electors of said county will be taken thereon at such annual election or township meeting.

When notice to be given that vote will be taken.

SEC. 11. At the time specified in said notice, a vote of such electors shall be taken for and against such proposed loan, or tax, as the case may be, and the votes shall be canvassed by the township canvassers, and the result certified by them, and transmitted to the county clerk within ten days after such vote shall have been taken; and such clerk shall deliver such certified statements to the board of supervisors at their next meeting; and if it shall appear from such certificates, that a majority of said electors have voted for such loan or tax, it shall be the duty of the board of supervisors to borrow or raise as aforesaid the sum specified in their said notice.

Vote of electors and proceedings thereon.

SEC. 12. Whenever the said board shall have borrowed or raised by a tax any money as aforesaid, such money shall not be used for any other purpose than that for which the same was borrowed or raised; and such money shall be paid into the county treasury, and may be drawn therefrom for the purposes aforesaid, in the same manner as other moneys may be drawn from the treasury for the contingent charges of the county.

Moneys to be paid into the treasury, and how applied,

1841, p. 49, § 1.

SEC. 13. The said board shall provide for the payment of the moneys borrowed by them as above provided, with the interest thereon, in the same manner as is provided for the payment of the contingent expenses of the county.

How payment of money borrowed to be provided for.

SEC. 14. The county clerk of each county shall be the clerk of the board of supervisors of said county, and shall be allowed for his services as such clerk, a reasonable compensation, to be fixed by the board, and to be paid by the county.

County clerk to be clerk of board, his compensation.

SEC. 15. It shall be the general duty of such clerk,

General duty of clerks.

1. To record in a book to be provided for that purpose, all the proceedings of the board:

2. To make regular entries of all their resolutions and decisions, on all questions concerning the raising of moneys:

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Clerks to keep books, &c., and give copies when demanded.

Clerks to designate amounts allowed.

Supervisors to cause buildings to be repaired.

Solitary cells in county jails.

Compensation of supervisors.

1842, p. 23, § 1.

Reports of receipts and expenditures to be published annually.

When special meetings of board may be held.

Penalty for neglect of duty by supervisors.

Appeals to circuit court.

1840, p. 55.

3. To record the vote of each supervisor on any question submitted to the board, if required by any member present : and,

4. To preserve and file all accounts acted upon by the board.

SEC. 16. The books, records and accounts of the boards of supervisors, shall be deposited with their clerk, and shall be open without any charge, to the examination of all persons; and the clerk shall deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person six cents for every folio of one hundred words contained in such copy.

SEC. 17. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed.

SEC. 18. It shall be the duty of the several boards of supervisors, as often as shall be necessary, to cause the court house, jail, and public offices of their respective counties, to be duly repaired at the expense of such county; but the sums expended in such repairs shall not exceed five hundred dollars in any one year.

SEC. 19. They shall also cause to be prepared within the jails of the respective counties, at the expense of such counties, so many solitary cells for the reception of convicts who may be sentenced to punishment therein, as they may deem necessary.

SEC. 20. Each member of the board of supervisors shall be allowed a compensation for his services and expenses in attending the meetings of the board, at the rate of one dollar and fifty cents per day, and six cents for each mile travelled in going from the residence of the supervisor to the place of meeting, to be audited by the board, and paid by the county.

SEC. 21. The several boards of supervisors shall cause to be made out and published yearly, immediately after their annual meeting, in at least one newspaper, if there be one published in the county, a report of the receipts and expenditures of the year next preceding, and the accounts allowed.

SEC. 22. A special meeting of the board of supervisors of any county, shall be holden only when requested by a majority of the supervisors in such county; which request shall be in writing, addressed to the county clerk, and specifying the time and place of such meeting; and upon the reception of such request, the clerk shall immediately give notice in writing of such meeting to each of the supervisors of said county, but not more than fifteen days shall be occupied by any board of supervisors in any year.

SEC. 23. If any supervisor shall neglect or refuse to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, without just cause therefor, he shall, for each offence forfeit one hundred dollars.

SEC. 24. When any claim of any person against a county, shall be disallowed in whole or in part by the board of supervisors, such person may appeal from the decision of the board disallowing the same, to the circuit court for the same county, by causing a written notice of such appeal to be served on the clerk of such board within twenty days after the making of such decision; provided the party appealing shall give security for all costs that shall be adjudged against him by the court; said security to be approved by the county clerk.

SEC. 25. The clerk of the board, on receiving such notice of an ap-

peal, shall immediately give notice thereof to the prosecuting attorney, unless he shall be a party to, or interested in such appeal, and the prosecuting attorney shall thereupon appear in the matter of such appeal in behalf of the county, and defend therein; but if the prosecuting attorney shall be a party to, or interested in the appeal, then the clerk shall give notice thereof to the supervisors, or one of them, who may employ some other attorney to attend thereto in behalf of the county.

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Clerk to give notice of appeal to prosecuting attorney, &c.

1840, p. 56, § 4.

SEC. 26. The court to which such appeal may be taken, shall proceed to hear and determine the same in a summary manner, at the next term after the same shall have been taken, unless it shall be continued upon good cause shown; and if such court shall affirm the decision appealed from, judgment shall thereupon be rendered against the party appealing, for costs; but if the whole, or any part of the account disallowed by the board of supervisors, shall be allowed by the court, such court may in its discretion, allow costs to the party appealing; and the clerk of said court shall prepare and file with the board of supervisors, at their next meeting after such determination, a statement of the decision of the court on such appeal.

Proceedings on appeal, costs, &c.

1840, p. 56, § 5.

Board of Auditors for the county of Wayne.

SEC. 27. There shall continue to be a board of county auditors for the county of Wayne, composed of three persons, one of whom shall be elected annually at the general election in said county, and shall hold his office for the term of three years, and until his successor shall be elected and qualified; but no two of such auditors shall be residents of the same township or city.

Board of auditors for county of Wayne.

1844, p. 122.

SEC. 28. The annual meeting of the board of auditors shall be held at the office of the county clerk on the first Monday of October in each year, and the auditor having the shortest portion of a regular term to serve, shall be the chairman of the board; and such board shall have the power to adjourn from time to time, when necessary for the transaction of business; and may hold special meetings at such times and places as a majority of them may deem proper, public notice thereof being first given by the clerk of the board, by publishing the same in a newspaper printed in said county, at least ten days before the holding thereof.

Meetings of board

SEC. 29. The said board of auditors shall have and exercise all the powers, and perform all the duties conferred or imposed upon the boards of supervisors of the several counties in this chapter, or by any other provisions of law, except those mentioned in the next succeeding section; and the board of supervisors of the county of Wayne shall not have or exercise any of the powers herein conferred upon said board of auditors.

Powers and duties.

SEC. 30. The supervisors in the county of Wayne shall hold their annual meeting in each year, at the time and place appointed by law; and shall have and exercise all the powers conferred by law upon the supervisors of the several counties, in relation to the equalizing and correcting of the assessments in said county, apportioning the state and county taxes to be collected in the several townships, ascertaining and returning the aggregate valuation of real and personal property in the county, and all other matters connected with the assessment and collection of taxes within said county.

Powers and duties of board of supervisors for county of Wayne

SEC. 31. The said board of county auditors shall, on or before the

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Auditors to report amount of tax necessary to be raised.

Appeal, how taken.

Clerk of board of auditors; his duties.

Compensation of auditors.

annual meeting of the board of supervisors in said county in each year, ascertain and report to said board of supervisors, the amount of tax necessary to be raised therein for county purposes.

SEC. 32. Appeals may be taken from the determination of said board of auditors in the same cases, in the same manner, and with the like effect, as provided in relation to appeals from the determinations of boards of supervisors of the several counties.

SEC. 33. The county clerk of the county of Wayne shall be the clerk of said board of auditors, and shall perform the same duties as clerk of such board, as the clerks of the several counties are required to perform as clerks of the board of supervisors therein.

SEC. 34. Each of said auditors shall be allowed for his services and expenses in attending the meetings of the board, at the rate of one dollar and fifty cents per day, and six cents per mile for traveling from his residence to the place of meeting; to be certified by the clerk, and audited by the judges of the county court for the county of Wayne.

Of the County Treasurer.

County treasurer elected for two years, to give bond.

SEC. 35. The county treasurer shall be elected at the general election, for the term of two years, and shall give a bond for the faithful and proper discharge of the duties of his office, as hereinafter directed.

Bond to be given to supervisors, its condition.

SEC. 36. The said bond shall be given to the board of supervisors of the county, with three or more sufficient sureties to be approved of by the board of supervisors, and in such sum as they shall direct, conditioned that such person, and his deputy, and all persons employed in his office, shall faithfully and properly execute their respective duties and trusts, and that such treasurer shall pay according to law, all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by the board of supervisors, or by any provision of law; and that he will deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers and other things appertaining or belonging to said office.

Deputy.

SEC. 37. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of a vacancy in said office, or any disability of the treasurer to perform the duties of his office, may perform all the duties of the office of treasurer, until such vacancy be filled, or such disability be removed.

Office, how supplied in case of vacancy, &c.

SEC. 38. In case the office of county treasurer shall become vacant, or in case the treasurer from any cause, shall be incapable of discharging the duties of his office, the board of supervisors may, if in their opinion the interests of the county require it, by writing under their hands, select a suitable person to perform the duties of the treasurer; and such person so selected, upon giving such bond for the faithful performance of the duties of the office as the said board shall direct, may perform such duties until such vacancy shall be filled or such disability be removed.

Who not to be treasurer.

SEC. 39. No person holding the office of prosecuting attorney, judge of a county court, county clerk, supervisor or sheriff, shall hold the office of county treasurer.

To receive and pay moneys.

SEC. 40. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be

derived; and all moneys received by him for the use of the county, shall be paid by him only on the order of the board of supervisors, signed by their clerk, and countersigned by their chairman, except when special provision for the payment thereof is or shall be otherwise made by law.

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SEC. 41. At the annual meeting of the board of supervisors, or at such other time as they shall direct, the county treasurer shall exhibit to them, all his books and accounts, and all vouchers relating to the same, to be audited and allowed.

To exhibit books, &c., to supervisors.

SEC. 42. Upon the death, resignation, or removal from office, of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of the preceding county treasurer, or in case of his death, upon the oath of his executors or administrators.

Moneys, &c., to be delivered to successor.

SEC. 43. The county treasurer shall receive for his services, such compensation as the board of supervisors shall deem reasonable, to be allowed and ordered by them.

Compensation.

SEC. 44. When directed by the board of supervisors, the county treasurer shall cause to be insured any or all the public buildings belonging to the county, as said board shall direct, and the insurance thereon shall be taken in the name of the treasurer, and his successors in office.

Insurance of buildings of county.

1840, p. 161.

SEC. 45. In case of the destruction of, or damage done to the buildings so insured, the treasurer shall have authority, and it shall be his duty, to demand and receive the moneys which shall be due on account of such insurance, and in case of neglect or refusal to pay the same, he shall sue for and collect such moneys in his name of office whenever directed by the board of supervisors, and pay the same into the county treasury, to be used in repairing or rebuilding such public buildings.

Treasurer to collect moneys in case of damage.

1840, p. 161, § 1.

SEC. 46. Whenever the condition of the county treasurer's bond shall be forfeited, to the knowledge of the board of supervisors of the county, they shall cause such bond to be put in suit.

Bond, when to be put in suit.

SEC. 47. All moneys recovered in any such action, shall be applied by the board of supervisors to the use of the county, or to such other use or uses as the same ought properly to be applied to.

Moneys recovered on bond, how applied.

SEC. 48. The county treasurer shall keep his office at the seat of justice for the county.

To keep office at seat of justice.

Judges of the County Court.

SEC. 49. One county judge and one second judge for each of the organized counties of this state, shall be elected at the general election for the term of four years.

County judges elected for four years.

Const. art. 6, § 4

SEC. 50. No judge of a county court for any county shall practice as an attorney or counsellor at law within such county.

Not to practice as attorney, &c., within his county.

Judge of Probate.

SEC. 51. The judge of probate for each organized county shall be elected at the general election, for the term of four years, and shall have possession of the seal, records, books, files and papers belonging to the court of probate, and shall keep a record of all orders, decrees and other official acts made or done by him, which record may be inspected by all persons interested without charge.

Judge of probate to be elected for four years, to have custody of probate records. Cons. art. 6, § 4.

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To keep his office at seat of justice. Compensation.

Prosecuting attorney to appear for state, &c.

Const. art. 7, § 3.

To attend before magistrates, &c.

To give opinions in certain cases.

Report of prosecuting attorney.

Penalty for neglect to make report.

Not to receive fee from prosecutors, &c.

Compensation.

Courts may appoint in certain cases.

County clerk to be elected and give bond.

SEC. 52. The judge of probate shall hold his court at the seat of justice of the county; and he shall receive such compensation for his services as shall be allowed by law.

Prosecuting Attorney.

SEC. 53. The prosecuting attorneys shall, in their respective counties, appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be a party or interested.

SEC. 54. Each prosecuting attorney shall, when requested by any magistrate of the county, appear in behalf of the people of this state, before any such magistrate, other than those exercising the police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the people of this state, of which such magistrate shall have jurisdiction.

SEC. 55. The prosecuting attorneys shall give opinions, in cases where the state or county may be a party or interested, when required by any civil officers in the discharge of their respective official duties relating to the interests of the state or county.

SEC. 56. Each prosecuting attorney shall, in the month of November in each year, make and transmit to the attorney general, a report, setting forth particularly the amount and kind of official business done by him in his county in the preceding year; the number of persons prosecuted; the crimes and misdemeanors for which such prosecutions were had, the result thereof, and the punishments awarded.

SEC. 57. Each prosecuting attorney who shall neglect or refuse to make and transmit his annual report as required by the preceding section, shall forfeit the sum of fifty dollars for each and every such neglect or refusal.

SEC. 58. No prosecuting attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend; nor be concerned as attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced or prosecuted, shall depend.

SEC. 59. The prosecuting attorneys shall severally receive such compensation for their services, as the board of supervisors of the proper county shall, by an annual salary or otherwise, from time to time order and direct.

SEC. 60. The supreme court and each of the circuit courts may, whenever there shall be no prosecuting attorney for the county, or when the prosecuting attorney shall be absent from the court, or unable to attend to his duties, if either of said courts shall deem it necessary, by an order to be entered in the minutes of such court, appoint some other attorney at law to perform, for the time being, the duties required by law to be performed in either of said courts by the prosecuting attorney, who shall thereupon be vested with all the powers of such prosecuting attorney for that purpose.

County Clerk.

SEC. 61. The county clerk in each organized county shall be elected at the general election, for the term of two years, and shall give a

bond to the people of this state in the penal sum of two thousand dollars, to be approved by the circuit court or the county judge, for the faithful discharge of the duties of his office.

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Const., art. 6, § 5.

SEC. 62. The condition of such bond shall be in substance as follows : Condition of
"Whereas, the above bounden hath bond.

been elected to the office of clerk of the county of
at the general election held therein, (or at a special election held there-
in,) on the day of : Now,
therefore, the condition of the above obligation is such, that if the
said shall faithfully, truly and impartially
enter and record all orders, decrees, judgments and proceedings of
the courts whereof he shall officiate as clerk, and faithfully and impar-
tially perform all other duties of his said office, and shall pay over all
moneys that may come into his hands as such clerk, and shall deliver
over to his successor in office all the books, records, papers, seals, and
other things belonging to his said office, then the above obligation to
be void, otherwise to be and remain in full force."

SEC. 63. Each county clerk shall appoint a deputy, to be approved Deputy clerk,
by the circuit court or the county judge, and may revoke such appoint- how appointed.
ment at his pleasure ; which appointment and revocation shall be in
writing, under his hand, and filed in his office ; and in the absence of
the clerk from his office, or from the court, the deputy may perform all
the duties of such clerk.

SEC. 64. The county clerk and his sureties shall be responsible for the acts of his deputy ; and in case of the death, resignation or remo- Clerks, &c., re-
val of the clerk, or in case of a vacancy by any other means, in the sponsible for acts
said office of clerk, the deputy shall perform all the duties of such of deputy.
clerk, until such vacancy shall be filled. When deputy to
act as clerk.

SEC. 65. The books necessary to be kept and used in the clerk's Books to be pro-
office, shall be procured by the clerk, under the direction of the judge cured,
of the circuit court, at the expense of the county ; and the board of
supervisors of the county shall audit and allow the account for such
books, on the certificate of the said judge.

SEC. 66. The clerk of each county shall transmit to the secretary Clerk, when to
of state, annually, within one week after the fourth day of July, a list transmit list of
certified by him, of all justices of the peace of the county, stating the justices to secre-
time of their respective election, and their terms of service, and whe- tary of state.
ther elected to fill a vacancy, and if so, what vacancy ; and whenever 1840, p. 52, § 6.
the county clerk shall receive information of the death, removal or re-
signation of any justice of the peace of his county, it shall be his duty
forthwith to notify the secretary of state of such vacancy.

SEC. 67. The county clerk shall keep his office at the seat of justice To keep office at
for the county, and shall receive such fees and compensation for his seat of justice.
services as shall be provided by law.

Of Sheriffs.

SEC. 68. The sheriff of each organized county shall be elected at the general election, for the term of two years, and shall give bond to the people of this state in the penal sum of ten thousand dollars, and with such sufficient sureties, not less than three in number, as the judge of the circuit court, or the county judge shall approve. When sheriff
elected, term
of office, bond.

SEC. 69. The condition of such bond shall be in substance as follows : Condition of
"Whereas, the above bounden hath sheriff's bond.
been elected to the office of sheriff of the county of

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at the general election held therein, (or at a special election held there-
in,) on the _____ day of _____ : Now, therefore,
the condition of the above obligation is such, that if the said
shall well and faithfully in all things perform and execute the office of
sheriff of the said county of _____ during his con-
tinuance in office by virtue of the said election, without fraud, deceit,
or oppression, and shall pay over all moneys that may come into his
hands as such sheriff, then the above obligation to be void, otherwise
to be and remain in full force."

**Sheriff may ap-
point deputies.**

SEC. 70. Each sheriff may appoint four deputies, for whose official
acts he shall be in all respects responsible, and may revoke such ap-
pointments at his pleasure; and persons may also be deputed by any
sheriff, by an instrument in writing, to do particular acts.

Under sheriff.

SEC. 71. The sheriff of each county shall, as soon as may be, after
entering upon the execution of his office, appoint some proper person
under sheriff of the same county, who shall also be a general deputy,
to hold during the pleasure of such sheriff; and as often as a vacancy
shall occur in the office of such under sheriff, or he become incapable of
executing the same, another shall in like manner be appointed in his place.

**When under
sheriff to act as
sheriff.**

SEC. 72. Whenever a vacancy shall occur in the office of sheriff of
any county, the under sheriff of such county shall in all things execute
the office of sheriff, until a sheriff shall be elected and qualified; and
any default or misfeasance in office of such under sheriff in the mean
time, as well as before, shall be deemed to be a breach of the condition
of the bond given by the sheriff who appointed him, and also a breach
of the condition of the bond executed by such under sheriff to the
sheriff by whom he was appointed.

**Appointment of
deputies, &c.,
how made.**

SEC. 73. Every appointment of an under sheriff, or of a deputy she-
riff, and every revocation thereof, shall be in writing under the hand of
the sheriff, and shall be filed and recorded in the office of the clerk of
the county; and every such under sheriff or deputy shall, before he
enters upon the duties of his office, take the oath prescribed by the
twelfth article of the constitution of this state. But this section shall
not extend to any person who may be deputed by any sheriff to do a
particular act only.

**Sheriff to renew
security.**

SEC. 74. It shall be the duty of every sheriff, within twenty days af-
ter the first Monday in January in each year subsequent to that in
which he shall have entered on the duties of his office, to renew the
security required to be given by him before entering upon the duties
of his office; which renewed security shall be in the same amount,
and be given in the same manner, and be subject in all respects to the
same regulations, as the original security required from such sheriff.

**To have care of
jails.**

SEC. 75. The sheriff shall have the charge and custody of the jails
of his county, and of the prisoners in the same; and shall keep them
himself, or by his deputy or jailor, for whose acts he shall be respon-
sible.

**To execute pro-
cess.**

SEC. 76. The sheriff in person or by his under sheriff or deputies,
shall serve or execute according to law, all process, writs, precepts
and orders, issued or made by lawful authority, and to him directed.

**When sheriff,
&c. may execute
process after ex-
piration of office.**

SEC. 77. Sheriffs and their deputies may execute all such process
as shall be in their hands at the expiration of the term for which such
sheriffs were elected, or at the time of their removal from office; and
in case of a vacancy in the office of sheriff, every deputy in office un-
der him, having any writ or process in his hands at the time such va-

cancy happened, shall have the same authority, and be under the same obligation to serve and execute, and return the same, as if such sheriff had continued in office.

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SEC. 78. Any default or misfeasance in office of any deputy sheriff or jailor, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Default of deputy, &c., breach of sheriff's bond.

SEC. 79. Any action for the malfeasance, misfeasance or nonfeasance of a sheriff or any of his deputies, may be prosecuted against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common law.

Action for malfeasance, &c., of sheriff, &c., to survive.

SEC. 80. No sheriff, deputy sheriff or coroner shall appear in any court as attorney or counsel for or on behalf of any party in a suit; nor shall he draw, make or fill up any writ, declaration plea or process, for any such party; nor shall he, with intent to procure himself to be employed in the collection of any demand, or the service of any process, advise or counsel any person to commence any suit or proceeding; and either of said officers, for a violation of any provision of this section, shall forfeit the sum of fifty dollars.

No sheriff, &c., to act as attorney or counsel, or draw papers.

SEC. 81. Any sheriff, deputy sheriff, coroner or constable, may require suitable aid in the service of process in civil or criminal cases, in preserving the peace, or in apprehending or securing any person for felony or breach of the peace, when such officer may have power to perform such duty; and when any such officer shall find resistance made against the execution of any process, or shall have good reason to believe that such resistance will be made, he may take the power of the county, and proceed therewith in proper person to execute such process.

Sheriff, &c. may require aid in certain cases.

SEC. 82. Whenever a sheriff shall be required, by any statutory provision, to perform any service in behalf of the people of this state, and for their benefit, which shall not be made chargeable by law to his county, or to some officer or other person, his account for such services shall be audited by the auditor general and paid out of the state treasury.

When sheriff's services chargeable to the state.

SEC. 83. It shall be the duty of the sheriff of every county to keep an office at the place where the courts for such county are held, of which he shall file a notice in the office of the clerk of the county; and to keep the same open during the usual business hours each day, Sundays excepted.

Sheriff to keep office and give notice thereof.

SEC. 84. Every notice or other paper which shall be required to be served on any sheriff, may be served by leaving the same at the office designated by him in such notice, during the hours for which it is required to be kept open; but if there be any person belonging to such office therein, such notice or paper shall be delivered to such person; and every such service shall be deemed equivalent to a personal service on such sheriff.

Papers may be served by leaving at sheriff's office.

SEC. 85. If no notice shall be filed by any sheriff with the county clerk as herein required, the service of all papers on such sheriff may be made by leaving them at the office of the county clerk, with such clerk or his deputy; and the same shall be deemed equivalent to a personal service on such sheriff.

If no notice given, papers may be left at county clerk's office.

Coroners.

SEC. 86. Two coroners shall be elected for each of the organized counties of this state, at the general election, for the term of two years,

Two coroners to be elected in each county. To give bond.

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Const. art. 7, § 4.

When coroner
to be designated
to act as sheriff.

Coroners to ex-
ecute process
when sheriff a
party. &c.

Register of deeds
to be elected and
give bond.

Const. art. 7, § 4.

Office to be kept
at seat of justice.

Register to ap-
point deputy, &c.

When deputy to
act as register.

When judge to
appoint person
to perform du-
ties of register.

Supervisors to
provide books
for recording.

who shall give bond to the people of this state, in such penal sum, and with such sufficient sureties, as the judge of the circuit court, or the county judge, shall direct and approve, the condition of which bond shall be in substance the same as that to be given by the sheriff; varying only in the description of the office.

SEC. 87. When there shall be no sheriff or under sheriff in any county, the judge of the circuit court or the county judge, shall designate one of the coroners to perform the duties of sheriff, which coroner, so designated, shall be vested with the same powers, and be liable in the same manner as sheriffs, until a sheriff shall be elected and qualified; and shall have the custody and control of the jail and the prisoners therein; and when the sheriff, for any cause shall be committed to the jail, the coroner living nearest the jail shall be keeper thereof during the time the sheriff shall remain a prisoner therein.

SEC. 88. Every coroner within his county, shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party or interested in the case; and in all cases where a coroner may execute the duties of the sheriff, he shall have the same powers conferred upon, and proceed in the same manner prescribed for the sheriff, in the performance of similar duties; and such coroner shall be liable in the same manner, and to the same extent, as sheriffs are made liable in similar cases.

Register of Deeds.

SEC. 89. The register of deeds for each organized county shall be elected at the general election, for the term of two years, and shall give bond to the people of this state in the penal sum of three thousand dollars, with two sureties to be approved by the county treasurer, the condition of which shall be, that he shall faithfully and impartially discharge the duties of his office.

SEC. 90. The register shall keep his office at the seat of justice for the county, and shall receive such fees and compensation for his services as may be provided by law.

SEC. 91. The register of deeds shall appoint a deputy, to hold his office during the pleasure of the register; such appointment and the revocation thereof to be in writing, and filed in the office of the county clerk; and before such deputy shall enter upon the duties of his office, he shall take the oath prescribed by the twelfth article of the constitution, and for the faithful performance of his duties by such deputy the register and his sureties shall be responsible.

SEC. 92. In case of a vacancy in the office of the register of deeds, or his absence or inability to perform the duties of his office, such deputy shall perform the duties of register during the continuance of such vacancy or disability.

SEC. 93. If during a vacancy in the office of register of deeds, there shall be no deputy register, or if such deputy be unable from any cause, to perform the said duties, the judge of the circuit court for the county, or the county judge may, by writing under their hands, (*his hand*,) appoint some suitable person to perform the duties of register of deeds for the time being, who shall take an oath of office, and give such bond as the said judge shall direct and approve.

SEC. 94. The board of supervisors of each county shall from time to time provide suitable books, at the expense of the county, for the entering and recording of all deeds and matters required by law to be entered and recorded by the register of deeds.

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Sec. 95. The county surveyors for each organized county, shall be elected at the general election, for the term of two years, and shall give bond to the people of this state, in the penal sum of two thousand dollars, with two sureties to be approved by the county treasurer, conditioned for the faithful and impartial discharge of the duties of his office.

County surveyor to be elected; term of his office and bond.

Const., art. 7, § 4.

Sec. 96. Each county surveyor may appoint one or more deputies, and revoke such appointment at pleasure; which appointment and revocation shall be in writing, under his hand, and filed with the county clerk, and such deputies shall take the constitutional oath of office; and for the faithful performance of the duties of their office by such deputies, the said surveyor and his sureties shall be responsible.

Surveyors may appoint deputies.

Sec. 97. The certificate of the surveyor or his deputy, of any survey made by him of any lands in the county, shall be presumptive evidence of the facts therein contained, unless such surveyor or deputy shall be interested therein.

Certificates of surveyor, when presumptive evidence.

Sec. 98. The county surveyor, in person or by deputy, shall make and execute such surveys within his county, as may be required of him by order of any court, or by application of any person therefor.

Surveyor to make surveys ordered by court.

Sec. 99. Whenever a survey may be required of any land, in which the county surveyor or either of his deputies shall be interested, or when, from any cause there shall be no surveyor or deputy surveyor of the county to be found or able to act, such survey may be made by the surveyor of an adjoining county or either of his deputies, in like manner, and to the same effect, as if such survey had been made by the surveyor of the county where the land is situated.

When surveyor or deputies interested, surveys may be made by county surveyor of adjoining county.

Sec. 100. Each county surveyor shall record, in a suitable book to be provided by him at the expense of the county, all surveys made by him and his deputies, except such as are made for a temporary purpose, and surveys of township highways, inserting at the head of each survey so recorded the name of the person for whom it was made, and the number of the survey in the order in which it shall be made; to which book he shall make an index, referring to such names, or in some other suitable manner referring to each survey, and the number thereof.

What surveys to be recorded.

Sec. 101. When the term of office of any county surveyor shall expire, or he shall resign or be removed, he shall deliver over all the books and papers relating to his office, to his successor therein; and any county surveyor, who, on the expiration of his term of office, or on his resignation or removal, shall neglect for the space of one month after his successor shall be elected or appointed and qualified, to deliver such books and papers as aforesaid, and any executor or administrator of any deceased county surveyor, who shall neglect for the space of one month to deliver to such successor all such books and papers which shall come to his hands, shall forfeit and pay a sum not less than ten nor more than fifty dollars, and a similar sum for every month thereafter during which he shall so neglect to deliver the same as aforesaid.

County surveyor to deliver books and papers to successor. Penalty for neglect.

1845, p. 65.

Sec. 102. All records of surveys, field notes and calculations, made by any former county surveyor, since the organization of the state government, and now in the hands of such former county surveyor, or of any other person, shall, on demand of the county surveyor of the proper county, be immediately delivered to him, as a part of the re-

Records, &c., of former surveyors to be delivered over.

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Surveys, how made.

cords and files of his office, and the boards of supervisors of the several counties shall respectively audit and allow to the persons entitled thereto, such sum as they shall deem a reasonable compensation for the expense of the books containing such records.

SEC. 103. It shall be the duty of each county surveyor, in subdividing any section, or part of a section of land, originally surveyed under the authority of the United States, to make his survey in conformity to the original survey, and where any parcel of land is described as being one-half, or one-quarter, or any other equal portion of a quarter section, and the subdivision lines of such parcel shall not have been before established, the same shall be surveyed and subdivided in such manner as to include the equal portion of the quarter section so described.

Chainmen, &c., to be sworn.

SEC. 104. Every chainman and marker, employed in making surveys pursuant to the provisions of this chapter, shall first take an oath that he will faithfully discharge his duties as such, which oath the county surveyor or the deputy making the survey is hereby authorized to administer.

Variation from meridian to be stated.

SEC. 105. In all surveys made as aforesaid, except such as are made for a temporary purpose, the course shall be stated according to the true meridian; and the variation of the magnetic meridian from the true meridian shall also be stated, with the day, month and year when the survey was made.

Compensation to surveyor, &c.

SEC. 106. The county surveyors and their deputies shall respectively be entitled to receive for their services a compensation not exceeding three dollars a day, including the time of travelling to and from the place of making the survey, and fifty cents for recording each survey, to be paid by the person for whom the services are rendered; and for each plat and certificate, or a copy thereof, fifty cents, to be paid by the person requesting the same.

1845, p. 65.

Notaries Public.

Notaries public, how appointed.

SEC. 107. The governor, by and with the advice and consent of the senate, may appoint or one more notaries public in each county, who shall hold their offices respectively for four years, unless sooner removed by the governor.

Commission to be transmitted.

SEC. 108. Whenever the governor shall appoint a notary public, the secretary of state shall transmit his commission to the clerk of the county for which such notary was appointed; and the county clerk on receiving such commission, shall give notice thereof to the person so appointed.

1842, p. 77.

Oath of office.

SEC. 109. The person so appointed shall, before entering upon the duties of his office, and within twenty days after receiving notice of his appointment, appear before the county clerk and take the oath of office prescribed by the constitution, and the said clerk shall file and preserve the same in his office.

1842, p. 77, § 3.

Notary to give bond.

SEC. 110. Each notary public shall also, before entering upon the duties of his office, and within the time limited for filing his official oath, give bond to the people of this state, with one or more sureties to be approved by the county clerk, in the penal sum of one thousand dollars, the condition of which bond shall be that such notary shall duly and faithfully discharge the duties of his office, and he shall file same with said clerk.

SEC. 111. Upon the filing of the official oath and bond as required in

the two next preceding sections, the clerk shall deliver to the person so appointed the commission received by him for such person, and shall thereupon give notice to the secretary of state of the filing of such oath and bond, and of the time of filing the same.

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Clerk to deliver commission on filing bond.
1842, p. 77, § 4.

Powers.

SEC. 112. Notaries public shall have authority to take the proof and acknowledgments of deeds; to administer oaths, and take affidavits in any matter or cause pending, or to be commenced or moved in any court of this state; to demand acceptance of foreign and inland bills of exchange, and of promissory notes, and to protest the same for non-acceptance, or non-payment, as the case may require; and to exercise such other powers and duties, as by the law of nations, and according to commercial usage, or by the laws of any other state, government or country, may be performed by notaries public.

SEC. 113. In all the courts of this state the certificate of a notary public, under his hand and seal of office, of official acts done by him as such notary, shall be received as presumptive evidence of the facts contained in such certificate; but such certificate shall not be evidence of notice of non-acceptance or non-payment in any case in which a defendant shall annex to his plea, an affidavit denying the fact of having received such notice.

When certificate of notary to be presumptive evidence.

3 Kent's com., 93 statutes of Tennessee, 1836, p. 502, § 1-5.

SEC. 114. Whenever the office of any notary public shall become vacant, the records of such notary and all the papers relating to his office, shall be deposited in the office of the clerk of the proper county; and any notary, who, on his resignation or removal from office, shall neglect, for the space of three months, to deposit such records and papers, and any executor administrator of any deceased notary public who shall neglect, for the space of three months after his appointment, to deposit with said clerk all such records and papers as shall come to his hands, shall forfeit and pay a sum not less than fifty dollars, nor more than two hundred dollars.

When office of notary vacated, papers, &c., to be deposited with county clerk.

Penalty for neglect.

SEC. 115. If any person shall knowingly destroy, deface, or conceal any records or papers belong to the office of a notary public, he shall forfeit and pay a sum not exceeding five hundred dollars; and such person shall also be liable to an action for damages at the suit of the party injured.

Penalty for destroying or concealing papers.

SEC. 116. The county clerk shall receive and safely keep all the records and papers of notaries public, directed to be deposited in his office, and shall give certified copies of such records and papers, under his hand and seal, when required; and for such copies he shall receive the same fees as are by law allowed to notaries public; and copies so given by said clerk shall be as valid and effectual as if given by a notary public.

County clerk to keep records, &c., and give copies when required.

SEC. 117. Notaries public shall reside in the county for which they are appointed, but they may act as such notaries in any part of this state; and they shall receive for their services such fees as are provided by law.

Where notaries to reside.

Filing Oaths and Bonds by County Officers.

SEC. 118. Each of the officers named in this chapter, except notaries public and prosecuting attorneys, shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election, or within twenty days after the commencement of the term for which he was elected, take and subscribe the oath of office prescribed by the constitution of this state, before some officer

Certain officers to take oath, &c.

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Official bonds,
when to be de-
posited with
county treasurer.

authorized by law to administer oaths, and deposit the same with the clerk of the proper county, who shall file and preserve the same in his office.

SEC. 119. Each of the said officers of whom a bond shall be required by law, except the said treasurer, before entering upon the duties of his office, and within the time limited in the last preceding section for depositing his oath, shall deposit his bond with the said treasurer, who shall file and preserve the same in his office; and the said treasurer, before entering upon the duties of his office, and within the time limited in the preceding section for depositing his oath, shall deposit his bond with the clerk of the county, who shall file and preserve the same in his office.

Penalty for neglect.

SEC. 120. If either of the said officers shall neglect to deposit his oath or bond according to the provisions of the two last preceding sections, without giving the notice specified in the next section, or if he shall enter upon the execution of his office before he shall have so deposited his said oath or bond, he shall in either case, forfeit and pay one hundred dollars.

No penalty to attach when notice given.

SEC. 121. No penalty shall attach on account of any neglect to deposit such oath or bond as aforesaid, in case such officer, before entering upon the execution of his office, and within the time limited for filing such oath or bond, shall give notice in writing to the officer or officers having the power by law to order an election to fill such office, or to fill the same by appointment, stating therein that he declines accepting such office.

Commission of
pros. attorney to
be transmitted.
Clerk to give notice.

SEC. 122. Whenever the governor shall appoint a prosecuting attorney, the secretary of state shall transmit his commission to the clerk of the county for which such prosecuting attorney was appointed, and the county clerk on receiving such commission, shall immediately give notice thereof to the person so appointed.

Person appointed to take oath before clerk.

SEC. 123. The person so appointed shall, before entering upon the duties of his office, and within twenty days after receiving notice of his appointment, appear before the county clerk and take and subscribe the oath of office prescribed by the constitution, and file the same with the clerk, who shall thereupon deliver to the person so appointed the commission received by him for such person, and shall thereupon give notice to the secretary of state of the filing of such oath, and of the time of filing the same.

Regular term of
county officers,
when to commence.
In case of election to fill vacancy.

SEC. 124. The regular terms of office of the several county officers elected at the general election, shall commence on the first Monday of January succeeding their election; but those elected at the general election, or at a special election, to fill vacancies, may qualify and enter upon the execution of their offices immediately after being notified of their election.

CHAPTER 15.

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CHAPTER 15.OF RESIGNATIONS, VACANCIES, AND REMOVALS, AND OF SUPPLYING
VACANCIES.*Resignations.*

SECTION 1. Resignations shall be made as follows :

Resignations, to
whom made.

1. By the governor, lieutenant governor, and all officers elected by joint vote of the senate and house of representatives : to the legislature :

2. By officers appointed by the governor alone, or by the governor by and with the advice and consent of the senate, or both branches of the legislature ; to the governor :

3. By senators and representatives, to the presiding officers of their respective houses, who shall immediately transmit the same to the governor :

4. By all other officers who hold their offices by election, except officers elected at township meetings ; to the officer or officers respectively authorized by law to order a special election to fill such offices respectively :

5. By all other officers holding their offices by appointment, and not by election ; to the body, board, or officer that appointed them.

SEC. 2. It shall be the duty of all officers, bodies, or boards to whom the resignation of any office contemplated in the last preceding section, is authorized to be made, or who are authorized to fill any vacancy in any of said offices, or to order a special election therefor, when duly informed of the existence of such vacancy, to cause to be filed in the office of the secretary of state, a statement of the occurrence, with the date and cause of such vacancy.

Duties of officers
&c., to whom re-
signations are
made.*Vacancies.*

SEC. 3. Every office shall become vacant, on the happening of either of the following events, before the expiration of the term of such office :

What events to
create vacancy.

1. The death of the incumbent :

2. His resignation :

3. His removal from office :

4. His ceasing to be an inhabitant of this state ; or, if the office be local, of the district, county, township, city or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged :

5. His conviction of any infamous crime, or of any offence involving a violation of his oath of office :

6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond, within the time prescribed by law : or,

7. The decision of a competent tribunal, declaring void his election or appointment.

Removals from Office.

SEC. 4. The secretary of state, auditor general, and all state and county officers, except the state treasurer, and judges of the supreme and circuit courts, who are or shall be appointed by the governor alone, or by the governor, by and with the advice and consent of the

Certain officers
may be removed
for neglect.

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senate, or of both branches of the legislature, or by the legislature without the concurrence of the governor, may, for official misconduct, or habitual or wilful neglect of duty, at any time during the recess of the legislature, be removed, and the vacancy supplied during such recess, by the governor.

Persons appointed to fill vacancy may be removed.

SEC. 5. All officers who are or shall be appointed by the governor to fill a vacancy which shall have existed during the recess of the legislature, may be removed by the governor.

When governor may remove county and township officers.

SEC. 6. The governor shall remove all county officers chosen by the electors of any county or appointed by him, except county judges, judges of probate and county clerks, and shall also remove all justices of the peace and township officers chosen by the electors of any township, when in his opinion such officer is incompetent to execute properly the duties of his office; or when he is satisfied that such officer has been guilty of official misconduct, or of wilful or habitual neglect of duty, if in his opinion such misconduct or neglect shall be sufficient cause for such removal; but no such officer shall be removed for such misconduct or neglect, unless charges thereof shall have been exhibited to the governor, and a copy of the same served upon such officer, and an opportunity given him of being heard in his defence.

Prosecuting attorney to conduct examinations, &c.

SEC. 7. The governor may direct the prosecuting attorney of the county in which such officer may be, unless such prosecuting attorney be the officer charged, to conduct an inquiry into the charges made; and such prosecuting attorney shall thereupon give at least eight days' notice to the officer accused, of the time and place at which he will proceed to the examination of witnesses in relation to such charges, before some county judge for the same county; and he shall also, at the time of giving such notice, serve on the officer accused, a copy of such charges.

Subpœnas, and enforcing obedience thereto.

SEC. 8. The prosecuting attorney may issue subpœnas, signed by him with his name of office, to compel the attendance of any witness whom he shall deem material, before the county judge of the county, and such judge shall have the same power to enforce obedience to such subpœna, by attachment, and to commit any person who shall refuse to be sworn, or to answer, as the circuit court would have in a civil cause pending therein.

Accused may have subpœnas.

SEC. 9. On the application of the officer accused, to the prosecuting attorney, or to any justice of the peace, he shall be entitled to the like process of subpœna, obedience to which may be enforced in the same manner as provided in the last preceding section, by the judge before whom the inquiry may be conducted.

Examinations made and transmitted.

SEC. 10. At the time and place therefor specified in the notice, the judge before whom such inquiry shall be conducted, shall proceed to take [the] testimony of the witnesses produced before him by the prosecuting attorney, and by the officer accused, which witnesses shall be sworn by such judge; and every answer given by them to any question which either party shall require to be reduced to writing, shall be written by, or under the direction of such judge; their testimony shall then be read to, and subscribed by them, and shall be certified by the judge taking the same, and delivered to the prosecuting attorney, who shall transmit the same to the governor.

Proceedings, when charges made against prosecuting attorney.

SEC. 11. Whenever charges shall be made against any prosecuting attorney as provided in section seven (*six*) of this chapter, the governor shall direct the attorney general, or the prosecuting attorney of

some county adjoining that in which the accused resides, or some other attorney at law, to conduct the inquiry into such charges; and such officer or attorney, when so directed, shall have and exercise the same powers to conduct such inquiry, and shall proceed therein in the same manner, as the prosecuting attorney of the proper county is authorized and required to do in other cases.

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1840, p. 36.

SEC. 12. The judge of the circuit court and the county judge shall have authority, in term time or in vacation, to remove the county clerk, when in their opinion he is incompetent to execute properly the duties of his office; or when on charges and evidence they shall be satisfied that he has been guilty of official misconduct; or habitual or wilful neglect of duty, if, in their opinion such misconduct or neglect shall be a sufficient cause for such removal; but no such clerk shall be removed for such misconduct or neglect, unless charges thereof shall have been preferred to said judges, and notice of the hearing, with a copy of the charges delivered to such clerk, and a full opportunity given him to be heard in his defence.

When judges may remove clerk.

SEC. 13. The office of state treasurer, commissioner of the land office, or of any other collector or receiver of public moneys, appointed by the legislature, by the governor alone, or by the governor, by and with the advice and consent of the senate, or of both branches of the legislature, except those officers for whose removal provision is otherwise made by law, may be declared vacant by the governor, in case it shall appear to him on sufficient proofs that such treasurer, commissioner or other officer, has in any particular wilfully violated his duty.

When governor may declare certain offices vacant.

Supplying Vacancies.

SEC. 14. When, during the recess of the legislature, there shall be in either of the offices to be appointed by the governor alone, or by the governor, by and with the advice and consent of the senate, or of both branches of the legislature, or by the legislature without the concurrence of the governor, no officer duly authorized to execute the duties thereof; some suitable person may be selected and appointed by the governor to perform the duties of either of said offices for the time being.

Governor may fill certain vacancies during recess of legislature.

SEC. 15. When, at any time, there shall be in either of the offices of sheriff, coroner, county clerk, register of deeds, or county surveyor, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county judge and second judge of the county, to perform the duties of either of said offices for the time being.

When judges may fill vacancies.

SEC. 16. Each of the persons appointed in pursuance of either of the two last preceding sections, shall, before proceeding to execute the duties assigned him, comply with such conditions and directions as shall be prescribed and given relative to oaths and bonds, by the officer or officers appointing him as aforesaid.

Persons appointed to fill vacancy to comply with directions, &c.

SEC. 17. All officers appointed by the governor during the recess of the legislature, shall continue to exercise the duties of their respective offices until the close of the next succeeding session, unless others shall be appointed in their stead by competent authority, and shall have entered upon the discharge of their respective duties.

Officers appointed by governor during recess, how long to hold.

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OF TOWNSHIPS AND TOWNSHIP OFFICERS.

Chapter 16. Of the Powers and Duties of Townships, and Election and Duties of Township Officers.

Chapter 17. Of the Division of Townships.

Chapter 18. Of Fences and Fence Viewers; of Pounds and the Impounding of Cattle, &c.

Chapter 19. Of Penalties for violating Election Laws.

CHAPTER 16.

OF THE POWERS AND DUTIES OF TOWNSHIPS, AND ELECTION AND DUTIES OF TOWNSHIP OFFICERS.

Boundaries of townships.

SECTION 1. The limits and boundary lines of every organized township shall remain as now established, until otherwise provided by law.

Powers and Duties of Townships.

Inhabitants of townships to be a body corporate and may hold and dispose of real estate, &c.

SEC. 2. The inhabitants of each organized township shall be a body corporate, and as such, may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate for the public use of the inhabitants, and to convey, alienate and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of their corporate powers, and any orders for the disposal of their corporate property which they may judge expedient.

May raise money, for what purposes.

SEC. 3. The inhabitants of each township shall have power, at any legal meeting, by a vote of the qualified electors thereof, to grant and vote such sums of money, not exceeding such amounts as are or may be limited by law, as they shall deem necessary for defraying all proper charges and expenses arising in the township.

Orders and by-laws.

SEC. 4. The inhabitants of each township may, at any legal meeting, by a vote of the qualified electors thereof, make all such orders and by-laws for determining the time and manner in which cattle, horses, swine, sheep and other animals shall be restrained from going at large in the highways, and for directing and managing the prudential affairs of the township, as they shall judge most conducive to the peace, welfare and good order thereof.

Penalties.

SEC. 5. They may annex to such orders and by-laws suitable penalties, not exceeding ten dollars for any one breach thereof, to be recovered by complaint before any justice of the peace of the township or county where the offence shall have been committed.

By-laws to be published.

SEC. 6. The by-laws of any township shall, before the same shall take effect, be published, by posting up copies thereof in three of the

most public places in the township; and such by-laws, duly made and published, shall be binding upon all persons coming within the limits of the township, as well as upon the inhabitants thereof.

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SEC. 7. All suits, acts or proceedings, by or against a township, in its corporate capacity, shall be in the name of such township; but every conveyance of lands within the limits of such township, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the township by name.

Suits, &c.

Conveyances made for use of township.

Township Meetings.

SEC. 8. The annual meeting of each township shall be held on the first Monday of April in each year; and at such meeting there shall be an election for the following officers: One supervisor, one township clerk, one treasurer, one school inspector, two directors of the poor, two assessors, if the qualified electors present at the opening of the meeting shall so determine by vote, one commissioner of highways, so many justices of the peace as there are by law to be elected in the township, and so many constables as shall be ordered by the meeting, not exceeding four in number.

Annual meeting, when held.

Officers to be elected.

SEC. 9. Each of the officers named in the last preceding section, shall be chosen by ballot; and before proceeding to choose the officers hereinafter directed to be chosen at such meeting.

Officers to be chosen by ballot.

SEC. 10. There shall also be elected at such meeting, to be chosen viva voce, or in such manner as the meeting may direct, one overseer of highways for each road district, and as many pound masters as the meeting may direct.

Officers to be chosen viva voce.

SEC. 11. Justices of the peace shall severally hold their offices for four years, except when elected to fill a vacancy in office occurring before the expiration of the legal term of four years, and when elected to fill such vacancy, they shall hold during the unexpired portion of such term; Provided, that when there shall have been no previous election and classification of justices of the peace in any township pursuant to the sixth article of the constitution of this state, the justices elected at such meeting shall be classed and divided by lot, respectively, for one, two, three, or four years, and shall severally hold their offices accordingly.

Term of office of justices.

SEC. 12. Each commissioner of highways shall hold his office for three years, and until his successor shall be elected and qualified, except when elected to fill a vacancy, in which case he shall hold during the unexpired portion of the regular term: Provided, that when there shall have been no previous election for highway commissioners in any township, there shall be three such highway commissioners elected, one for one year, one for two years, and one for three years; and provided also that at the annual township election, in each of the organized townships, to be held in the year one thousand eight hundred and forty seven, there shall also be elected three such highway commissioners, one for one year, one for two years, and one for three years.

Term of office of commissioners of highways.

SEC. 13. Each school inspector elected as aforesaid, shall hold his office for two years, and until his successor shall be elected and qualified, except when elected to fill a vacancy, in which case he shall hold during the unexpired portion of the regular term; Provided, that where there shall have been no previous election for school inspectors in any township, there shall be two such inspectors elected, one

Term of office of school inspectors

1843, p. 99, § 24.

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for one year, and one for two years, who shall severally hold their offices accordingly.

What officers to hold one year. SEC. 14. Each of the officers elected at such meetings, except justices of the peace, commissioners of highways and school inspectors, shall hold his office for one year, and until his successor shall be elected and duly qualified.

Officers elected to fill vacancies. SEC. 15. Each township officer elected at a special meeting to fill a vacancy, shall hold his office during the then unexpired portion of the regular term of the office, and no longer, unless again elected.

Meetings where to be held. SEC. 16. The annual and special township meetings, shall severally be held at the place in the township where the last annual township meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or when there has been no such previous meeting, at such place as shall be directed in the act or proceedings by which the township was organized, unless it shall, in either case, become inconvenient to do so.

When place of meeting may be changed, and meeting adjourned. SEC. 17. Whenever it shall become inconvenient to hold a township meeting at the place designated therefor, the board of inspectors, or a majority of them, after having assembled at, or as near as practicable to such place, and opened the meeting, and before receiving any votes, may adjourn said meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting.

Proceedings on adjournment. SEC. 18. Upon adjourning any township meeting as provided in the last section, the board of inspectors shall cause proclamation thereof to be made, and shall leave a constable, or some other proper person at the place where such meeting was opened, to notify all persons arriving at such place that the meeting has been adjourned, and the place to which it has been adjourned.

For what purposes meeting may adjourn. SEC. 19. Any annual or special meeting may, by a vote of the meeting, be adjourned to any other day, and from time to time, for the purpose of transacting any proper business of the township, except for the election of officers.

First meeting in townships, where held. SEC. 20. The first township meeting after the organization of any township, shall be held on the first Monday in April after its organization, and at such meeting there shall be an election for such officers as are by law to be elected at township meetings.

Proceedings at first meeting in township. SEC. 21. At the first township meeting in any township, the qualified electors present, between the hours of nine and ten o'clock in the forenoon, shall choose one of their number as moderator, one of their number as clerk, and two others of their number as inspectors, who shall severally take the oath of office prescribed by the twelfth article of the constitution, and shall conduct the proceedings of such meeting in all respects as other township meetings are required by law to be conducted, as near as may be, and with the same powers.

In case of failure, meeting how called. SEC. 22. If the inhabitants of any newly organized township shall fail to hold their first township meeting on the day specified by law, any three qualified voters of such township, may call a meeting of the electors of such township, for such township election, at any time thereafter, by posting up notices thereof in not less than three public places in such township, at least ten days previous to the holding of such meeting.

Who to administer oaths. SEC. 23. At such first township meeting, the moderator shall administer the oath of office to the other inspectors, and either of

the other inspectors, after having been so qualified, may administer the like oath to the moderator.

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SEC. 24. Special township meetings may be held for the purpose of choosing officers to fill any vacancies that may occur, if the township board shall deem it expedient, and make their order therefor.

Special meetings
to fill vacancies.

SEC. 25. Special township meetings shall also be held for the purpose of transacting any other lawful business, when ordered by the township board, on a request to them in writing, signed by any twelve electors of the township, specifying therein the purposes for which such meeting is to be held; and the mode of proceeding at all special meetings, shall be the same as at the annual meetings.

Special meetings
for other purposes.

SEC. 26. Every order for a special township meeting shall specify the purpose for which it is to be held, and the time when, and the place where it shall be held; and if any vacancies in office are to be filled at such meeting, such order shall state in what offices vacancies exist, how they occurred, and who were the last incumbents, and if the vacancy be in the office of justice of the peace, such order shall also state at what time the constitutional term of office will expire.

Orders for special
meeting
what to specify.

SEC. 27. The time appointed for holding any special township meeting shall not be more than twenty, nor less than fifteen days from the time of making the order therefor; and such order shall be left with the township clerk within two days after the making thereof, and shall be recorded in his office.

Within what
time after order
meeting to be
held.

SEC. 28. The said clerk shall, within two days after such order shall be left with him, cause copies thereof to be posted up in three of the most public places in the township; and if there be a newspaper printed in such township, he shall also cause a copy to be published therein, if practicable, at least five days before the day appointed for such special meeting.

Clerk to give no-
tice.

SEC. 29. No notice of the annual township meetings shall hereafter be necessary.

No notice of an-
nual meeting.

Manner of conducting Elections.

SEC. 30. At the election of officers required to be chosen by ballot at the annual township meeting, the inspectors of election shall be the same as at the general election.

Inspectors of
elections.

SEC. 31. The township clerk shall be the clerk of the township meeting, and shall keep faithful minutes of its proceedings, and a correct list of the persons voting at the election: and he shall enter at length in his minutes, every order or direction, and all rules and regulations made by such meeting.

Township clerk
to keep minutes.

SEC. 32. If the township clerk be absent, then such person as shall be appointed by the inspectors for that purpose shall act as clerk of the meeting, first taking an oath to be administered by one of the inspectors, that he will faithfully perform the duties of his office according to the best of his ability.

When clerk of
meeting to be ap-
pointed by in-
spectors.

SEC. 33. The polls of the election shall be opened at nine o'clock in the forenoon, or as soon thereafter as may be, and shall be closed between the hours of three and six o'clock in the afternoon, and the inspectors shall cause proclamation to be made at least one hour before the closing of the polls, that the polls of the election will be closed, at or within the specified hour, naming it.

Opening and
closing of poll.

SEC. 34. When the election is by ballot, the inspectors shall deposit the ballots in a box, to be constructed, kept and disposed of, as near as may be, in the manner prescribed in chapter five.

Ballots to be de-
posited in box.

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Ballots, what to contain, &c.

SEC. 35. The ballot shall be a paper ticket, with the names of the persons for whom the elector intends to vote written or printed, or partly written and partly printed thereon; and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names as designated to any office, than there are persons to be chosen at such election to fill such office, and each ballot shall be so folded as to conceal the contents, and shall be delivered to one of the inspectors.

Designation of persons to fill vacancy.

SEC. 36. If at any election, there shall be one or more vacancies to be supplied, in the office of justice of the peace, school inspectors or commissioners of highways, and at the same election, any such officer is to be elected for the full term, it shall be necessary to designate on the ballot the person or persons voted for to supply such vacancy or vacancies.

Challenges.

SEC. 37. If any person offering to vote at such election, or upon any question arising at such township meeting, shall be challenged as unqualified by any inspector, or any elector entitled to vote at such meeting, the inspectors shall proceed thereupon in the manner prescribed in chapter five, in case of a challenge at the general election; and no person whose vote shall have been received upon such challenge, shall be again challenged upon any other question, arising at the same township meeting.

Authority to preserve order, &c.

SEC. 38. The inspectors, or officer presiding, shall have the same authority to preserve order, to enforce obedience, and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election.

Officers to be elected after close of polls.

SEC. 39. Immediately after the close of the polls, there shall be elected the other officers to be elected by the meeting, in such manner as the meeting shall direct.

Questions upon motions, how determined.

SEC. 40. All questions upon motions made at township meetings, shall be determined by a majority of the electors voting; and the officer presiding at such meeting shall ascertain and declare the result of the votes upon each question.

Canvass of Votes.

Canvass of votes and determination of result.

SEC. 41. The votes given by ballot shall be publicly canvassed by the inspectors, at the place where the meeting was held, and the result shall be read by the clerk to the persons there assembled; and such reading shall be sufficient notice to all persons elected at that election to any office, whose names are on the poll list as voters.

Ballots to be counted and compared with poll list.

SEC. 42. Before the ballots are opened, they shall be counted and compared with the poll list, and the like proceedings shall be had, as to ballots folded together, and as to differences in number, as are prescribed in chapter five.

Statement of result, &c.

SEC. 43. The canvass being completed, and the result ascertained, the inspectors shall draw up a statement in writing, setting forth, in words at full length, the whole number of votes given for each office, the names of the persons for whom such votes for each office were given, and the number of votes so given to each person, which statement shall be certified under the hands of the inspectors to be correct.

Statement of determination to be certified and recorded.

SEC. 44. The inspectors shall also certify upon such statement, their determination of the persons elected to the respective offices, including as well those elected without ballot, as those elected by ballot; which statement and certificate of determination shall be left with the township clerk, and recorded in his office.

SEC. 45. The persons having received the greatest number of votes given for any office at such election, shall be deemed and declared duly elected; and if two or more persons shall have received an equal number of votes for the same office, the inspectors of election shall determine the choice by lot, and shall declare and certify the same accordingly.

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Who to be deemed elected; when choice to be determined by lot.

Township Officers.

SEC. 46. All officers, except justices of the peace, required to be elected at township meetings by ballot, shall, before entering upon the duties of their offices, and within ten days after notice of their election, respectively take and subscribe the oath of office prescribed by the twelfth article of the constitution, before the township clerk, or some other officer authorized to administer oaths, and file the same with the township clerk, who shall record the same: and such oath shall be administered without reward, and certified by the officer before whom the same was taken, with the date of taking the same.

Oath of office.

SEC. 47. Within two days after the election of any officers at a township meeting, the clerk shall transmit to each person elected to any township office, and whose name shall not have been entered on the poll list at such election as a voter, a notice of his election; and each overseer of highways and pound master elected at such meeting, shall, within ten days after notice of his election, file with the said clerk a notice in writing, of his acceptance, and in default thereof he shall be deemed to have refused to serve.

Clerks, when to notify persons elected.

SEC. 48. The persons so elected justices of the peace, shall enter upon the duties of their offices respectively, as follows:

When justices to enter upon their duties.

1. Those elected for the full term of four years, on the fourth day of July next succeeding their election:

2. Those elected to fill vacancies, and those elected at the first township meeting in any new township, immediately upon the filing of their oath of office and security with the county clerk, as required by law.

SEC. 49. When a new township shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof, and shall hold their offices according to their respective classes; and only so many justices shall be chosen as shall be necessary to complete the number of four for such township.

Justices residing in new townships

SEC. 50. Within six days after the election of justices of the peace in such new township, the supervisor shall give notice in writing to the justices elected, and to the township clerk, of the time and place when and where he will meet them, to determine by lot the classes of [such] justices; which notice shall be served at least six, and not more than twelve days, previous to the time appointed therein for such meeting.

Classification of justices.

1836, p. 20, § 6.

SEC. 51. At the time and place so appointed, the supervisor and township clerk shall cause to be written on separate pieces of paper, as near alike as may be, the numbers one, two, three, four, or such, and so many of such numbers as shall correspond with the classes which shall be vacant, and shall cause them to be rolled up as nearly alike as may be, and deposited in a box; and the persons elected justices shall severally draw one of the said pieces of paper, and shall be classed according to the number written on the paper so drawn by him, and shall hold his office for such number of years, either one, two, three or four, as shall correspond with such number so drawn.

Mode of classifying.

1836, p. 21, § 7.

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When supervisor
to draw for ab-
sent justices.
1836. p 21, § 8.

Certificates of
classification to
be made and re-
corded.

Classification in
case of election
to fill vacancies.

Penalty on
officers for neg-
lect to qualify,

Sec. 52. If any person elected a justice shall neglect to attend such drawing, the supervisor shall draw for him; but if the supervisor be absent from his township, or unable to serve, or his office be vacant, the township clerk shall give the notice and perform the duties herein enjoined on such supervisor.

Sec. 53. Duplicate certificates of such drawing, and of the result thereof, shall be made and certified by the supervisor and township clerk, or such one of them as shall attend the same, one of which shall be filed with the township clerk, and the other with the county clerk, and shall be recorded by said clerks in the books in which the canvasses of votes shall have been recorded, and shall be conclusive evidence of the classes to which the justices so elected belong.

Sec. 54. In case more than one existing vacancy in the office of justices of the peace shall be supplied by election at any township meeting, the classes of the persons elected to fill the same shall be determined by lot, within the time, and in the manner prescribed for classifying justices elected in new townships.

Sec. 55. If any person elected to any township office, except that of justice of the peace, of whom an oath of office is required, who is not exempted by law from holding the office to which he is elected, shall not, within ten days after notice of his election, take and subscribe the oath of office required by law, and cause the same to be filed with the township clerk, or if any such officer of whom a bond or security shall be required, shall not file such bond or security within the time above limited for filing his said oath, he shall forfeit and pay the sum of ten dollars; and if any person elected to the office of overseer of highways or pound master, and not exempted by law from holding such office, shall refuse to serve, he shall forfeit and pay the like sum.

Resignations, Vacancies and Supplying Vacancies.

How resignations
made.

Sec. 56. Resignations of all officers elected at township meetings, shall be in writing, signed by the officer resigning, and addressed to the township board, and shall be delivered to and filed by the township clerk; and when a justice of the peace resigns, such clerk shall immediately transmit a copy of such resignation, certified by him, to the county clerk.

When office to
become vacant.

Sec. 57. Every township office, including the office of justice of the peace, shall become vacant, upon the happening of either of the events specified in chapter fifteen, as creating a vacancy.

Temporary ap-
pointments in
certain cases to
be made by
township board.

Sec. 58. Whenever there shall be a vacancy, or when the incumbent shall, from any cause, be unable to perform the duties of his office, in either of the township offices, except that of justice of the peace and township treasurer, the township board may make temporary appointments of suitable persons to discharge the duties of such offices respectively; and such persons, so appointed, shall take the oath of office, or file the notice of acceptance required by law, and shall continue to discharge such duties until the office is filled by election, or until the disability aforesaid be removed.

1843, p. 20.

When township
treasurer to be
appointed by
board.

Sec. 59. In case the treasurer of any township shall refuse to serve, or shall vacate his office before completing the duties thereof, or be disabled from completing the same, by reason of sickness or any other cause, the township board shall forthwith appoint a treasurer for the remainder of the term, who shall give like security, and be subject to

like duties and responsibilities, and have the same powers and compensation as the treasurer in whose place he was appointed, and the township clerk shall immediately give notice thereof to the county treasurer: but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them.

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1841, p. 73, § 40.

Supervisor.

Sec. 60. The supervisor of each township shall prosecute, in the name of the people of this state, or otherwise, as may be necessary, for all penalties and forfeitures incurred within his township, and for which no other officer is specially directed to prosecute.

Supervisor to prosecute for penalties.

Sec. 61. He shall, by virtue of his office, be an assessor of his township.

To be an assessor.
1843, p. 64, § 12

Sec. 62. The supervisor shall preserve and keep all books, assessment rolls and other papers belonging to his office, and shall deliver the same on demand to his successor in office; and on application of any person, he shall give certified copies of any such papers, or abstracts from any assessment roll or books in his office; and for making any such copies or abstracts, he shall be entitled to receive from the person applying therefor, six cents for each folio; but no such copy or abstract and certificate shall be required for less than twelve and a half cents; and such certified copies or abstracts shall be presumptive evidence of the facts therein contained.

Supervisor to preserve books, &c., and give copies.

1843, p. 70.

Sec. 63. The supervisor of each township shall attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of such board of which he shall have notice.

To attend meetings of board of supervisors.

Sec. 64. Each supervisor shall lay before the board of supervisors such copies of entries concerning moneys voted to be raised in his township, as shall be delivered to him by the township clerk.

To lay before board, entries concerning moneys to be raised.

Township Clerk.

Sec. 65. The township clerk of each township shall have the custody of all the records, books and papers of the township, when no other provision is made by law; and shall duly file and safely keep all certificates of oaths, and other papers required by law to be filed in his office, and record such as are required to be recorded therein.

Township clerk to keep records, &c., of township.

Sec. 66. He shall transcribe, in the book of records of his township, the minutes of the proceedings of every township meeting held therein, and he shall enter in such book, every order or direction, and all rules and regulations made by any such township meeting.

Minutes of township meeting.

Sec. 67. The township clerks, immediately after the qualifying of any constables, chosen or appointed in their respective townships, shall return to the clerks of their respective counties, the names of such constables.

To return to county clerk names of constables.

Sec. 68. Each township clerk shall, immediately after the election of any justices of the peace in his township, transmit a written notice thereof to the county clerk, stating therein the names of the persons so elected, and the terms for which they were respectively elected; and if one or more of them has been elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office.

To give notice of election of justices.

Sec. 69. Each township clerk shall, immediately on entering upon the duties of his office, appoint a deputy, who shall take an oath of office and file the same with the clerk; and in case of the absence, sickness, death, or other disability of the clerk, such deputy shall per-

To appoint a deputy. Duties of deputy.

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form the duties of such clerk, and receive the same compensation as the clerk would have been entitled to receive therefor.

Township Board.

Who shall constitute township board.

SEC. 70. The supervisor, the two justices of the peace whose term of office will soonest expire, and township clerk, shall constitute the township board, any three of whom shall constitute a quorum for the transaction of business.

When quorum not present, one of remaining justices to act.

SEC. 71. When from any cause there shall not be three of the officers constituting such board, competent or able to act, one of the remaining justices, on being notified by any member of said board, shall meet with any members of the board, and shall have the same authority as the other members of the board.

Annual meeting of township board for auditing accounts, &c.

SEC. 72. The township board shall meet annually on the Tuesday next preceding the annual township meeting to be held in such township, for the purpose of auditing and settling all claims against the township; and they shall state on each account the amount allowed by them; and the amounts allowed by them shall be paid by the treasurer, on the order of the board, signed by their clerk, and countersigned by the chairman of the board.

Settlement with treasurer and other officers.

SEC. 73. The said board shall, at their annual meeting in each year, examine and audit the accounts of the township treasurer, for all moneys received and disbursed by him as such treasurer; and they shall also audit and settle the accounts of all other township officers, who are authorised by law to receive or disburse any public moneys by virtue of their offices.

Clerk of board.

SEC. 74. The township clerk shall be the clerk of such board, and shall keep a true record of all their proceedings in his office.

All accounts to be filed, and produced at annual meeting.

SEC. 75. All the accounts audited by such board, shall be filed and preserved by such clerk, for the inspection of any of the inhabitants of the township, and shall be produced at the next annual township meeting, and there read by him, if the same shall be required by the meeting.

Treasurer.

Duties of treasurer.

SEC. 76. The township treasurer shall receive and take charge of all moneys belonging to the township, or which are by law required to be paid into the township treasury, including all moneys that may accrue to his township on account of non-resident highway taxes, and shall pay over and account for the same, according to the order of such township, or the officers thereof duly authorized in that behalf; and shall perform all such other duties as shall be required of him by law.

1841, p. 159, § 4.

Bond of treasurer.

SEC. 77. Each township treasurer, within the time limited for filing his oath of office, and before he shall enter upon the duties of his office, shall give bond to the township in such sum, and with such sureties, as the supervisor shall require and approve, conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over according to law, all moneys which shall come into his hands, as such treasurer; and the supervisor shall endorse his approval thereon, and file the same in his office.

Treasurer to keep account of receipts and expenditures.

SEC. 78. Each township treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided

for that purpose, at the expense of the township, and to be delivered to his successor in office.

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SEC. 79. On the Tuesday next preceding the annual township meeting, he shall account with the township board of the township, for all moneys received or disbursed by him.

To settle with township board.

Constables.

SEC. 80. Every person elected or appointed to the office of constable, before he enters upon the duties of his office, and within the time prescribed by law for filing his official oath, shall execute, in the presence of the supervisor or clerk of the township, with one or more sufficient sureties, to be approved of by such supervisor or township clerk, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any execution that may be delivered to him for collection.

Constables to give security.

SEC. 81. Such supervisor or township clerk shall endorse on such instrument, his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the township clerk, and a copy of such instrument, certified by the township clerk, shall be presumptive evidence of the contents and execution thereof, and all actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected.

Approval and filing security.

SEC. 82. Constables shall serve all warrants, notices and process lawfully directed to them by the township board, or the township clerk, or any other officer, and shall perform such other duties as are required of them by law.

To serve warrants, notices, &c

SEC. 83. Any constable may serve any writ, process or order lawfully directed to him, in any township in his county.

Constable may serve process in any township in his county. Constables ministerial officers, and to attend courts.

SEC. 84. Constables shall be ministerial officers of justices of the peace, and shall attend upon the sessions of the circuit courts for their respective counties, when notified for that purpose by the sheriff.

Commissioners and Overseers of Highways.

SEC. 85. Every commissioner of highways, and every overseer of highways, having accepted his office, shall, for every neglect of the duties of his office, forfeit the sum of ten dollars.

Penalty on commissioners and overseers of highways for neglect of duty. May be indicted for deficiency in highways.

SEC. 86. Any of the said commissioners or overseers of highways, may be prosecuted by indictment, for any deficiency in the highways within his limits, occasioned or continued by his fault or neglect; and on conviction thereof, may be fined in any sum not exceeding fifty dollars.

SEC. 87. Each of the said commissioners of highways, before entering upon the duties of his office, and within the time limited by law for filing his official oath, shall give bond to the township in the penal sum of five hundred dollars, with one or more sufficient sureties to be approved by the supervisor, or by the township clerk, conditioned for the faithful performance of the duties of his office.

Commissioners to give bond.

SEC. 88. The supervisor or township clerk shall endorse his approval on such bond, and shall cause the same to be filed with the township clerk, who shall safely keep the same in his office.

Approving and filing bond.

SEC. 89. The township clerk of each township shall be the clerk of the

1840, p. 81, § 2.
1841, p. 158, § 1.

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CHAPTER 16.**

Clerk of commissioners, his duties.
1841, p. 159, § 2 and 3.

board of commissioners of highways, and shall, under their direction, record their proceedings in a suitable book to be provided by him for that purpose at the expense of his township, and shall keep an accurate account of all orders drawn by them on the township treasurer, stating the amount of each, and in whose favor the same was drawn; and all books and papers relating to the business of said commissioners, shall be preserved and kept by him in his office.

Justices of the Peace.

Oath of justices of the peace.

SEC. 90. Each justice of the peace elected to fill a vacancy, and each justice elected for a term less than four years, within ten days after notice of his election, and each justice of the peace elected for the full term of four years, on or before the fourth day of July next after his election, shall take and subscribe his oath of office before some officer authorized to administer oaths, and file the same with the county clerk.

Justices to give security.

SEC. 91. Each justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his official oath, shall execute in the presence of the supervisor of his township, or of the county clerk, with one or more sufficient sureties to be approved of by such supervisor or county clerk, an instrument in writing, by which such justice and his sureties shall jointly and severally agree to pay to each and every person entitled thereto, all such sums of money as such justice shall become liable to pay, for, or on account of any money which may come into his hands as a justice of the peace, upon demand thereof made by such person, his agent or attorney.

Approval of sureties and filing of instrument.

SEC. 92. Such supervisor or county clerk shall endorse on such instrument, his approval of the sureties therein named, and such justice shall then cause the same to be filed in the office of the county clerk, and a copy of such instrument, certified by such clerk under his hand and seal, shall be presumptive evidence of the contents and execution thereof.

When and how justice and sureties may be sued, &c.

SEC. 93. If any justice of the peace shall fail to comply with such agreement, it shall be competent for any person to whom such justice shall have become liable by reason of such failure, to sue such justice and his sureties, or any of them in assumpsit, and to declare against them generally, for money had and received to the use of the plaintiff, and if the plaintiff win the trial of such suit, shall establish his right to recover, he shall have judgment for principal, interest and costs.

Penalty for entering upon his office without filing oath, &c.

SEC. 94. If any justice of the peace shall enter upon the execution of his office, before having filed his official oath, or such agreement as aforesaid, as required by law, he shall forfeit the sum of one hundred dollars.

Compensation to Township officers.

Compensation of certain township officers, for certain services.

SEC. 95. The following township officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the township, in the duties of their respective offices, to be verified by affidavit in all cases:

1. The officers composing the township board, assessors, inspectors of elections, clerks of the poll, commissioners of highways, school inspectors and directors of the poor, one dollar a day, and at the same rates for parts of a day:

1840, p. 27, § 3.
1843, p. 70, § 29.

2. The township clerk, as clerk of the board of commissioners of

highways, of the township board, and of the board of school inspectors, one dollar a day, and at the same rates for parts of a day; but no township officer shall be entitled to pay for acting in more than one capacity at the same time.

SEC. 96. For services not otherwise provided for by law, rendered to townships by township officers in the duties of their respective offices, the township board shall audit and allow such compensation as they shall deem reasonable.

Compensation for other services.

Township Business, other than Elections.

SEC. 97. In the transaction of any business other than the election of officers in any township meeting, the supervisor, if present, shall be the moderator of the meeting; and if he shall not be present, any other of the inspectors of election, except the clerk, who shall be designated by the inspectors present, shall be the moderator; or the meeting, under the direction of the inspectors present, may elect, viva voce, a moderator of the meeting.

Moderator of township meeting.

SEC. 98. The moderator shall preside in, and regulate the proceedings of the meeting; he shall decide all questions of order, and make public declaration of all votes passed; and when any vote so declared by him shall immediately upon such declaration be questioned by seven or more of the voters, he shall make the vote certain by polling the voters, or dividing the meeting, unless the township shall by a previous vote, or by their by-laws, have otherwise provided.

Powers and duties of moderator

SEC. 99. No person shall address the meeting before permission obtained of the moderator, nor while any other person is speaking by his permission; and all persons at such meeting shall be silent at the request of the moderator.

ib.

SEC. 100. If, at any township meeting any person shall conduct himself in a disorderly manner, and after notice from the moderator, shall persist therein, the moderator may order him to withdraw from the meeting; and on his refusal, may order the constables or any other persons to take him into custody until the meeting be adjourned.

Disorderly conduct at township meetings.

SEC. 101. Any person who shall refuse to withdraw from such meeting, on being ordered by the moderator to do so, as provided in the preceding section, shall for every such offence forfeit a sum not exceeding twenty dollars.

Penalty for disregarding order of moderator.

Qualifications of Voters and Officers.

SEC. 102. Each inhabitant of any township, having the qualifications of an elector, as specified in the constitution of this state, and no other person, shall have a right to vote on all matters and questions before any township meeting, and when any person claiming the right to vote shall be challenged by a voter, the moderator shall proceed in the same manner as on challenges at the election of township officers.

Who may vote, challenges.

SEC. 103. No person, except an elector as aforesaid, shall be eligible to any elective office contemplated in this chapter.

Eligibility to office.

City of Detroit and Monroe.

SEC. 104. The cities of Detroit and Monroe respectively, shall continue to have and exercise all the powers and privileges, and be subject to all the duties and liabilities conferred or imposed upon them, respectively, by law; and two additional justices of the peace shall continue to be chosen in the township of Monroe, and two in the city

Cities of Monroe and Detroit, additional justices. 1836, p. 23, § 17, 1840, p. 27, 1840, p. 157,

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of Detroit, in the same manner, and with the like powers, and subject to the same duties and liabilities, as provided in this chapter, in relation to the election, powers, duties and liabilities of justices of the peace.

CHAPTER 17.

OF THE DIVISION OF TOWNSHIPS.

Disposition of
lands on division
of township, and
apportionment of
proceeds.

SECTION 1. When a township seized of lands shall be divided into two or more townships, the township board [*boards*] of the several townships constituted by such division, shall meet as soon as may be after the first township meetings subsequently held in such townships, and when so met shall have power to make such agreement concerning the disposition to be made of such township lands, and the apportionment of the proceeds in case of a sale thereof, as they shall think equitable, and to take all measures, and execute all conveyances which may be necessary to carry said agreement into effect.

Proceeding on
alteration of
township.

SEC. 2. When a township shall be altered in its limits by annexing a part of its territory to another township or townships, the township board of the township from which such territory shall be taken, and of the township or townships to which the same shall be annexed, shall, as soon as may be after such alteration, meet for the purpose, and possess the powers provided in the preceding section.

If no agreement
is made, lands to
be sold.

SEC. 3. If no agreement for the disposition of such lands shall be made by the township board [*boards*] within six months after such alteration or division, then the township board of each township in which any portion of such lands shall lie, shall proceed as soon as may be thereafter, to sell and convey such part of said lands as shall be included within the limits of such township; and the proceeds arising from such sale shall be apportioned between the several townships interested therein, by the township board [*boards*] of all such townships, according to the amount of taxable property in the township divided or altered, as it existed immediately before such division or alteration, to be ascertained by the last assessment roll of such township.

Moneys, &c.,
how apportioned
in case of division,
&c.

SEC. 4. When a township possessed of, or entitled to money, rights and credits, or other personal estate, shall be so divided or altered, such moneys, rights, credits and personal estate, including moneys belonging to the township, in the hands of township officers, shall be apportioned between the townships interested therein, by the township boards of such townships, according to the rule of apportionment above prescribed; and they shall meet for that purpose as soon as may be after the first township meetings subsequently held in such townships.

Meeting of township
boards, how
called.

SEC. 5. Whenever a meeting of the township boards of two or more townships shall be required, in order to carry into effect the provisions of this chapter, such meeting may be called by either of the supervisors; but the supervisor calling the same shall give at least six days' notice in writing to all the other officers, of the time and place at which such meeting is to be held.

Sec. 6. The preceding sections of this chapter shall not apply to any cemetery or burying ground belonging to a township; but the same shall belong to the township within which it may be situated, after a division shall have been made.

Sec. 7. Debts owing by a township so divided or altered, shall be apportioned in the same manner as the personal property of such township; and each township shall thereafter be charged with, and pay its share of the debts, according to such apportionment.

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Qualification of preceding sections.
Debts, how apportioned.

CHAPTER 18.

OF FENCES AND FENCE VIEWERS; OF POUNDS AND THE IMPOUNDING OF CATTLE.

Fences and Fence Viewers.

SECTION 1. All fences four and a half feet high, and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

What constitutes lawful fence.

Sec. 2. The respective occupants of lands enclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares, so long as both parties continue to improve the same.

Partition fences, how maintained.

Sec. 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the township, who, after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.

Proceedings in case of neglect to repair or rebuild.

Sec. 4. When any deficient fence, built up or repaired by any complainant as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers, and the value of such repairing or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due, for one month after demand thereof made, the complainant may recover the same, with interest at one per cent a month, in an action for money paid, laid out and expended.

Remedy of complainant for repairs, &c.

Sec. 5. When any controversy shall arise about the rights of the respective occupants, in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the township where the lands lie, who, after due notice to each party, may in writing assign to each his share thereof, and direct the time

In case of controversy, fence viewers to assign.

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within which each party shall erect or repair his share of the fence in the manner before provided; which assignment, being recorded in the township clerk's office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence.

In case of neglect, &c., party erecting and maintaining fence entitled to double the value.

SEC. 6. In case any party shall refuse or neglect to erect and maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner before provided; and he shall be entitled to double the value thereof, ascertained in the manner aforesaid, and to be recovered in like manner.

When occupant to pay for portion of fence assigned to him.

SEC. 7. When, in any controversy that may arise between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter.

Partition fences to be kept repaired through the year, unless, &c.

SEC. 8. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise mutually agree.

When lands bounded or divided by river, &c. and parties disagree, viewers may be had.

SEC. 9. When lands of different persons, which are required to be fenced, are bounded upon, or divided by, any river, brook, pond or creek, which of itself, in the judgment of the fence viewers is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if in such case the occupant of the land on the one side, shall refuse or neglect to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or if such persons shall disagree respecting the same, then two or more fence viewers of the township wherein such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek.

Proceedings of fence viewers.

SEC. 10. If such fence viewers shall determine such river, brook, pond or creek in the preceding section mentioned, not to answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, they shall, after giving notice to the parties, determine how, or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and shall reduce such determination to writing, and sign the same; and if either party shall refuse or neglect to make and maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner.

When lands owned in severalty have been occupied in common, any occupant may have lines divided.

SEC. 11. When any lands, belonging to different persons in severalty shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the

party desiring it may have the same divided and assigned by two or more fence viewers of the same township, in the manner provided in this chapter.

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Sec. 12. Upon the division and assignment as provided in the preceding section, the fence viewers may, in writing, under their hands, assign a reasonable time for making the fence, having regard to the season of the year, and if either party shall not make his part of the fence within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover therefor double the ascertained expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

When viewers may assign time for making fence—consequence of neglect.

Sec. 13. When one party shall cease to improve his land, or shall open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure if the owner or occupant of such adjoining enclosure will, within two months after the same shall be ascertained, pay therefor such sum as two or more fence viewers shall, in writing under their hands, determine to be the value of such partition fence belonging to such party.

When partition fence not to be removed.

Sec. 14. When any uninclosed land shall be afterwards inclosed, the occupant or owner thereof shall pay for one half of each partition fence, standing upon the line between his land and the inclosure of any other occupant or owner, and the value thereof shall be ascertained by two or more fence viewers of the township, in writing, under their hands, in case the parties do not agree; and if such occupant or owner shall neglect or refuse for thirty days after the value has been so ascertained and demand made, to pay for one half of such partition fence, the proprietor of such fence may maintain an action in the form aforesaid, for such value, and the costs of ascertaining the same.

When occupant or owner to pay one-half of partition fence, &c.

Sec. 15. In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between townships, or partly in one township and partly in another, a fence viewer shall be taken from each township.

When a fence viewer to be taken from each township.

Sec. 16. Where a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties, and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had, as in case of other fences, and with the like effect.

Fences running into water.

Sec. 17. In all cases where the line upon which a partition fence is to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between the owners of such lands, recorded in the office of the clerk of the township, or of one of the townships where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences, agreeably to such division.

When line of unimproved lands divided, who to erect fences, &c.

Sec. 18. If any person shall determine not to improve any part of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months' notice of such determination to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence during the time his lands shall lie open and unimproved.

Notice on determination not to improve lands.

TITLE IV.
CHAPTER 19.*Fence Viewers.*Who to be fence
viewers.Penalty for neg-
lect.Compensation of
fence viewers.

SEC. 19. The overseers of highways of the several townships in this state, shall be fence viewers in their respective townships.

SEC. 20. Any fence viewer, who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

SEC. 21. Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in an action of assumpsit, double the amount of such fees.

*Pounds, and Impounding Cattle.*Townships to
provide and
maintain pounds.Punishment for
injury to pounds.

SEC. 22. Each township may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle may be restrained and kept from going at large contrary to law, or to any by-law of such township.

SEC. 23. If any person shall wilfully injure any pound maintained by any township, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, at the discretion of the court.

CHAPTER 19.

OF PENALTIES FOR VIOLATING ELECTION LAWS.

Punishment of
officers for wilful
neglect of duty.

1841, p. 187, § 7.

Punishment for
bribing an elec-
tor. &c.

1844, p. 15-16, § 1.

Punishment for
illegal voting.

SECTION 1. If any officer on whom any duty is enjoined by law, relative to general, special, township or charter elections, or the canvassing or return of votes given at any election, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, he shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding one thousand dollars, or imprisonment in the state prison not exceeding three years.

SEC. 2. If any person shall by bribery, menace, or any other corrupt means or device whatever, either directly or indirectly, attempt to influence any elector in giving his vote, or deter him from, or interrupt him in giving the same, at any election held pursuant to the provisions of law, such person shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or both, in the discretion of the court.

SEC. 3. Every person not a qualified voter, who shall at any election, wilfully give in a vote for any officer then to be chosen; and every qualified voter, who, at such election, shall vote or offer to vote in any township or ward in which he does not reside, or who shall vote or offer

to vote more than once at the same election, either in the same or any other township or ward, or shall give in two or more votes folded together, shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or both, in the discretion of the court.

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1841, p. 186, § 3,
1844, p. 16 § 2.

SEC. 4. Every person who shall procure, aid or counsel any person not duly qualified to vote at the place where the vote is given or offered, to give or offer his vote at any such election, and every person who shall procure, aid, or counsel any person to go or come into any township or ward for the purpose of voting therein, at any election, knowing that such person is not duly qualified to vote in such township or ward, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished in the manner prescribed in the third section of this chapter.

Penalty for counselling, &c., any person not qualified to vote.

1841, p. 187, § 4
and 5.

SEC. 5. Any person not duly authorized by law, who shall, during the progress of any election in this state, or after the closing of the polls, and before the ballots are counted, and the result ascertained, break open, or violate the seals or locks of any ballot box in which ballots have been deposited at such election, or who shall obtain undue possession of such ballot box containing such ballots, and conceal, withhold, or destroy the same, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited, and all persons aiding or abetting therein, shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten years, or by a fine not exceeding one thousand dollars.

Punishment for violation of ballot box, &c.

1841, p. 188, § 8.

SEC. 6. It shall be the duty of every inspector of elections, sheriff, constable, and justice of the peace, knowing, or having reason to believe that an offence punishable under the provisions of this chapter, has been committed, to cause the offender forthwith to be arrested, and to give information thereof to the prosecuting attorney without delay, and such prosecuting attorney shall adopt effectual measures for the punishment of all persons who shall violate the provisions of this chapter.

Duty of sheriff, &c., to cause offender to be arrested and give notice to prosecuting attorney.

SEC. 7. It shall be the duty of all courts in this state, having cognizance of such offences, at each term thereof, to charge the grand jury to make presentment of all offences committed within their respective counties, against any of the provisions of this chapter.

Courts to charge grand jury to present offences against this chapter.

**TITLE V.
CHAPTER 20.**

TITLE V.

OF TAXES AND DUTIES.

Chapter 20. Of the Assessment and Collection of Taxes.
Chapter 21. Of Specific State Taxes and Duties.

CHAPTER 20.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

Of the Property to be taxed.

All property liable not exempted 1843, p. 60.

SECTION 1. All property, real and personal, within this state, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

Real estate.

SEC. 2. Real estate shall, for the purposes of taxation, be construed to include all lands within the state, and all buildings and fixtures thereon, except in cases otherwise expressly provided by law.

Personal estate.

SEC. 3. Personal estate shall, for the purposes of taxation, be construed to include all goods, chattels, moneys and effects, wheresoever they may be; all ships, boats and vessels belonging to inhabitants of this state, whether at home or abroad, and all capital invested therein; all moneys at interest due the person to be taxed more than he pays interest for, and all other debts due such persons more than their indebtedness; all public stocks and securities, all stock in turnpikes, railroads, canals and other corporations out of this state, owned by inhabitants of this state; all personal estate of monied corporations, whether the owners thereof reside in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within this state.

Corporate property.

SEC. 4. All property of private corporations, except in the cases where some other provision is made by law, shall be assessed in the name of the corporation, in the township or ward where the same shall be situated; and in collecting the same, all the personal property of such corporation shall be liable to be seized wherever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes.

Property exempt from taxation.

SEC. 5. The following property shall be exempt from taxation, viz:

1. All personal property exempt by law from levy or sale on execution:
2. All the property of the United States, and of this state, except lands bid off for the state at tax sales:
3. All public or corporate property of the several counties, cities, villages, townships and school districts in this state, used or intended for corporate purposes:

4. The personal property of all library, benevolent, charitable and scientific institutions incorporated within this state, and such real estate belonging to such institutions as shall actually be occupied by them, for the purposes for which they were incorporated :

5. All houses of public worship, with the pews or slips and furniture therein, and rights of burial and tombs while in use as repositories of the dead :

6. The estates of Indians, except lands held by them by purchase, and the personal estates of persons who by reason of infirmity, age and poverty may, in the opinion of the assessors, be unable to contribute towards the public charges.

SEC. 6. When a tenant paying rent for real estate, shall be taxed therefor, he may retain out of his rent the taxes paid by him for the same, unless there be an agreement to the contrary.

When tenant
may retain
amount paid by
him.

SEC. 7. All personal estate within this state, except in the cases where other provision is made by the third and eighth sections of this chapter, shall be assessed to the owner in the township where he shall be an inhabitant on the second Monday of April, and all resident real estate, to the person occupying it on that day, unless the same shall be given in by some other person for assessment to him.

Personal estate,
where assessed.

SEC. 8. The excepted cases referred to in the preceding section, and not included in said section three, are the following :

Cases excepted.

1. All goods, wares and merchandize, or stock in trade, including stock employed in the business of the mechanic arts, in any township other than that where the owner resides, shall be taxed in the township where the same may be, if the owner hire or occupy a store, shop, or warehouse therein, and shall not be taxable where the owner resides :

2. All horses, mules, neat cattle, sheep and swine kept throughout the year in any township other than where the owner resides, shall be assessed to such owner in the township where they are kept :

3. All personal property belonging to minors under guardianship, shall be assessed to the guardian in the township where he is an inhabitant, and the personal property of every other person under guardianship, shall be assessed to the guardian in the township of which the ward is an inhabitant :

4. All personal property held in trust by any executor, administrator or trustee, the income of which is to be paid to any married woman or other person, shall be assessed to the husband of such married woman, or to such other person, in the township of which he is an inhabitant; but if such married woman or other person reside out of this state, the same shall be assessed to such executor, administrator or trustee, in the township where he resides :

5. Personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to the persons for whose benefit the same is accumulating, if within this state; otherwise to the person so placing it, or his executors or administrators, until a trustee shall be appointed to take charge of such property, or of the income thereof :

6. The personal estate of persons deceased, which shall be in the hands of executors or administrators, shall be assessed to the executors or administrators in the township where the deceased last dwelt, until they shall give notice to the assessor that the estate has been distributed and paid over to the parties interested :

7. All property held by any religious society as a ministerial fund, shall be assessed to the treasurer of such society; and if such pro-

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erty consists of real estate, it shall be taxed in the township where such property lies; if it consists of personal property, it shall be taxed in the township where such society usually holds its meetings.

Personal property mortgaged, &c

SEC. 9. When personal property is mortgaged, or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has possession thereof.

Undivided real estate of deceased person.

SEC. 10. The undivided real estate of any deceased person may be assessed to the heirs or devisees of such person, unless occupied by some other person to whom it may be assessed, without designating them by name, until they shall have given notice to the assessors of the division of such estate, and the names of the several heirs and devisees, and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs and devisees, their respective portions thereof, when paid by him.

University and school lands.

SEC. 11. Any person holding a certificate of purchase of university or primary school lands, or occupying the same, shall be liable to be assessed therefor as if he were the actual owner thereof: Provided however, that the same shall be assessed as personal property, and not as real estate, and the tax thereon shall be collected in the manner prescribed for the collection of taxes upon personal property.

Partners, how taxed.

SEC. 12. Partners in mercantile or other business, whether residing in the same or different townships, may be jointly taxed under their partnership name, in the township where their business is carried on, for all the personal property employed in such business; and if they have places of business in two or more townships, they shall be taxed in those townships for the proportion of property employed in such townships respectively; and in case of being so jointly taxed, each partner shall be liable for the whole tax.

Of the Duties of Assessors and other Officers.

When assessment to be made.

SEC. 13. The assessors in each township shall, between the second Monday in April and the first Monday in May in each year, make out an assessment roll of all the taxable property in their township, either by visiting the residence of each individual, or enquiring personally of the owner or occupant of any estate real or personal to be taxed, if such owner reside within the township, and shall appraise the same at its true cash value.

1844, p. 69, § 1.

Assessors may divide townships into districts.

SEC. 14. The assessors may divide their townships into districts for the purpose of ascertaining the property liable to be taxed, and the persons subject to the payment of taxes thereon, and assign one district to each assessor; but such property and persons, and the valuation of such property, shall be finally determined by them, or a majority of them, jointly, and if any assessor shall neglect his duties within his district, the other assessors shall perform them.

1844, p. 69.

When assessment roll to be reviewed.

SEC. 15. On Saturday next preceding the second Monday in May, in each year, the assessors shall meet at the office of the supervisor, in the several townships, for the purpose of reviewing and completing their assessment; and on the request of any person conceiving himself aggrieved, and on sufficient cause being shown by the affidavit of such person, or by other evidence to the satisfaction of the assessor, they may alter the same as to the personal property of such person, or the estimated value thereof, and when the party, his agent, or attorney shall make affidavit of the value, they shall assess it at the value sworn to; and no notice of such meeting shall hereafter be necessary.

1844, p. 69.

SEC. 16. The assessment roll shall contain the names of the resident persons liable to be taxed; a full description of the real estate of such persons; the number of acres in each tract or parcel, as near as the same can be ascertained, the estimated value of each tract or parcel, and the aggregate valuation of the personal estate of each person liable to be taxed.

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Assessment roll,
what to contain.

SEC. 17. For the purposes mentioned in the last preceding section, the auditor general shall, before the first Monday in April in each year, prepare and transmit suitable blanks to the several county treasurers, who shall, before the second Monday in April supply all the assessors with the same.

Blanks to be prepared and transmitted.

SEC. 18. The description of real estate shall be as follows :

Real estate how to be described.

1. If the land to be assessed be an entire section, it shall be described by the number of the section, township and range :

2. If the tract be a subdivision of a section authorized by the United States for the sale of the public lands, it shall be described by a designation of such subdivision, with the number of the section, township and range :

3. If the tract be less or other than such subdivision, it shall be described by a designation of the number of the lot or tract, or of other lands by which it is bounded :

4. In case of lands surveyed or laid out as a town or village, and a plat thereof recorded in the register's office of the county, if the tract to be assessed be a whole lot or block, it shall be described by a designation of the number thereof; if it be a part of a lot or block, it shall be described by its boundaries, or in some other way by which it may be known; and it shall not be necessary to insert the quantity of such lands in the assessment roll :

5. If the lands to be assessed be a tract of which the subdivision cannot be ascertained by the assessors, they shall enter on the roll the boundaries thereof :

6. Undivided shares or interests in lands, shall be assessed to the owners thereof, if such ownership is known to the assessors, and no tract in the same section, originally entered as one parcel, shall be subdivided in assessing, unless the fact of a subdivision having been made by the owner or owners, shall be known to the assessors :

7. It shall be sufficient to describe lands to be assessed or sold for taxes, in the manner heretofore in use, by initial letters, abbreviations and figures.

1844, p. 161.

SEC. 19. All lands unoccupied, and not claimed to be owned by any resident of the township where they are situated, and not exempt from taxation, shall be assessed as non-resident lands, and shall be entered on a part of the roll separate from that upon which the estates of residents are entered.

Non-resident lands.

SEC. 20. When a person is assessed as trustee, guardian, executor or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered on a separate line from his individual assessment.

Assessment to

SEC. 21. When the assessors shall have reviewed and completed the assessment roll, they shall attach a certificate thereto signed by them in the following form :

Certificate to be attached to roll.

"We do hereby certify that we have set down in the above assessment roll all the real estate in the township of _____ liable to be taxed, according to our best information, and that we have estimated

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the same at what we believe to be the true cash value thereof; that the said assessment roll contains a true statement of the aggregate valuation of the taxable personal estate of each and every person named in said roll, and that except in those cases where the value of such personal estate has been sworn to by the owner, his agent or attorney, we have estimated the same at its true cash value, according to our best information and belief."

Clerk of township to deliver statement of moneys for township purposes.

SEC. 22. The township clerk of each township shall, on or before the second Monday of October in each year, deliver to the supervisor of his township, a statement of the money to be raised therein for township purposes, and the amount voted for the maintenance and support of common schools, and the township library, stating the amount of each, as well as the aggregate amount.

Supervisors to equalize assessment.

SEC. 23. The board of supervisors of each county shall, at their session in October in each year, examine the assessment rolls of the several townships, and ascertain whether the relative valuation of real estate in the respective townships has been equally and uniformly estimated.

How assessment equalized.

SEC. 24. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the real estate in the township or townships, such percentage as in their judgment will produce relatively, an equal and uniform valuation of the real estate in the county, and the percentage added to or deducted from the valuation in each township, shall be entered upon their records.

Alterations of descriptions.

SEC. 25. The board of supervisors shall also make such alterations in the description of any lands upon such rolls, as may be necessary to render such description conformable to the requirements of this chapter.

Corrected roll to be certified and delivered to supervisor.

SEC. 26. After the assessments shall have been equalized, and the descriptions corrected, as provided in the two last preceding sections, a certificate signed by the chairman of the board, shall be made upon, or appended to the roll of each township, in the following form, to wit: "I do hereby certify that the board of supervisors have equalized and corrected the within roll, by adding to (or deducting from) the valuation of the real estate made by the assessors therein, per cent, (or, 'without adding to or deducting from the valuation of real estate, made by the assessors therein,' as the case may be,) and have determined the aggregate value of the taxable real and personal property in the township of _____, to be _____ dollars, and _____ cents, for the year eighteen hundred and _____; " which assessment roll thus certified, shall be delivered to the supervisor of the proper township, who shall file and keep the same in his office.

Aggregate valuation to be recorded and transmitted to auditor general.

SEC. 27. The board of supervisors, at the time of equalizing the assessments, shall cause to be entered on their records, the aggregate valuation of the taxable real and personal property of each township in their county, as determined by them; from which record the clerk of the board shall, within ten days after their annual meeting, make and transmit to the auditor general, by mail or otherwise, a statement of the aggregate valuation of the taxable real and personal property of the county, including the aggregate valuation of property in each township.

Manner of Assessing Taxes.

General state tax when to be apportioned, &c.

SEC. 28. Whenever a general [state] tax shall be required, and the

amount of such tax upon each dollar of the valuation shall not have been previously ascertained by law, the auditor general shall apportion the same among the several counties, in proportion to the valuation of the taxable property therein, as the same shall be ascertained from the last returns made to him by the clerks of the several boards of supervisors, and shall, before the October session of such boards, make out and transmit to the clerks of the several boards of supervisors, the amount of such tax so apportioned by him to the county, and shall charge the several amounts of such apportionments to the counties respectively.

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SEC. 29. The board of supervisors shall, at their annual session in October, in each year, ascertain and determine the amount of money to be raised by tax for county purposes, and apportion such amount, and also the amount of state tax required to be raised, among the several townships in the county, in proportion to the valuation of the taxable property therein for the year, as equalized by the board; which determination and apportionment shall be entered at large on their records.

Apportionment
of tax for county
purposes.

SEC. 30. The clerk of the board of supervisors shall, immediately after such apportionment, make out two certificates of the amount apportioned to be assessed upon the taxable property of each township, for state and county purposes, one of which he shall deliver to the county treasurer, and the other to the supervisor of the township, and the county treasurer shall charge the amount specified in each certificate to the proper township.

Certificate of ap-
portionment to
be made by
clerk, &c.

SEC. 31. The supervisor of each township shall proceed to assess taxes for the amount specified in such certificate, together with a tax for the amount of money to be raised by his township, adding thereto four per cent. for collection expenses, upon the taxable property in the township, according, and in proportion to the individual and particular estimate and valuation, as specified in the assessment roll of the township for the year.

How taxes as-
sessed by super-
visor.

1844, p. 100, § 7.

SEC. 32. The supervisor of each township, on or before the twenty-fifth day of October, in each year, shall notify the township treasurer of the amount of state and county tax apportioned to his township, and such treasurer, on or before the fifth day of November, shall give to the county treasurer and his successors in office, a bond in double the amount of such state and county taxes, with good and sufficient sureties, to be approved by the supervisor of the township, or the county treasurer, conditioned that he shall duly and faithfully perform the duties of his office, and shall deliver the same to the county treasurer.

Notice to treas-
urer—treasurer's
bond, &c.

1845, p. 87, § 7.

SEC. 33. The county treasurer shall file and safely keep such bond in his office, and on the receipt thereof, he shall give to the township treasurer a receipt, stating that he has received the bond required by the preceding section, which receipt the said township treasurer shall deliver to the supervisor on or before the tenth day of November.

County treas-
urer to file bond,
and give receipt.

SEC. 34. The supervisor, after the delivery of such receipt, and on or before the fifteenth day of November, shall deliver to the township treasurer a copy of the corrected assessment roll of his township, with the taxes for the year annexed to each valuation, and carried out in the last column thereof; the school, library, and school-house taxes in one column, the highway taxes in another, and the township, county, and state taxes in another column; and if other taxes are at any

When supervisor
to deliver assess-
ment roll to treas-
urer.

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time required by law, they shall be placed in another column, and the warrant for their collection shall specify particularly the several amounts and purposes for which said taxes are to be paid into the township and county treasuries respectively.

Warrant.

SEC. 35. To such assessment roll and tax list, a warrant under the hand of the supervisor shall be annexed, commanding such treasurer to collect from the several persons named in said roll, the several sums mentioned in the last column of such roll opposite their respective names, and to retain in his hands the amount receivable by law into the township treasury for the purposes therein specified, and to account for and pay over to the county treasurer the amounts therein specified for state and county purposes, on or before the first day of February then next; and the said warrant shall authorize the treasurer, in case any person named in the assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattles of such person.

When taxes to be a lien on real estate.

SEC. 36. The taxes assessed upon any real estate of any resident or non-resident, and all legal charges made thereon, shall be a lien on said real estate from the first day of November of the year in which such real estate was assessed.

Of the Collection and Return of Taxes.

Township treasurer to collect taxes.

SEC. 37. Every township treasurer, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, if a resident, or at the place of his usual residence in the township, and shall demand payment of the taxes charged to him on such list.

Proceedings in case of refusal to pay.

SEC. 38. In case any person shall refuse or neglect to pay the tax imposed on him, the treasurer shall levy the same by distress and sale of the goods and chattels of such person, or of any goods and chattels in his possession, wherever the same may be found within his township; and no claim of property to be made thereto by any other person, shall be available to prevent a sale.

Notice of sale

SEC. 39. The treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the sale, by advertisement to be posted up in three public places in the township where such sale shall be made; and the sale shall be by public auction.

Proceedings if property not sold

SEC. 40. If the property so distrained cannot be sold for want of bidders, the treasurer shall return a statement of the fact, and if the tax be assessed upon real estate, such real estate shall be returned in the same manner as if the same were non-resident lands.

Surplus, how disposed of.

SEC. 41. If the property distrained shall be sold for more than the amount of the tax and collection fees, the surplus shall be returned to the person in whose possession said property was when the distress was made, if no claim be made to such surplus by any other person in writing; but if any other person shall in writing claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the property was sold, the surplus shall be paid to such owner; but if such claim be denied by the person for whose tax the property was distrained, such surplus shall be deposited in the township treasury, until the rights of the parties shall be determined by law.

SEC. 42. In case any person upon whom any tax may be assessed

in any township for personal estate, shall have removed out of such township after the assessment, and before such tax ought by law to be collected, it shall be lawful for the treasurer of such township to levy and collect such tax of the goods and chattels of the person so assessed, in any township within the county to which such person shall have removed, or in which he shall reside.

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In case of removal from township, property may be taken in any part of county.

When tax shall be received on part of lot or undivided share, &c

SEC. 43. Such township treasurer shall receive the tax, or any one of the several taxes, on a part of any lot or parcel of land, or on any undivided share or other interest therein, which the tax payer will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid, the township treasurer shall enter a specification thereof in his return to the county treasurer; but if the part on which the tax is so paid shall be an undivided share, the person paying the same shall state to the treasurer the name of the owner of such share, that it may be excepted in case of the sale for the tax on the remainder, for which purpose the treasurer shall enter the name of such owner in his account of arrears of taxes.

SEC. 44. The township treasurer shall retain in his hands the amount specified in his warrant to be paid into the township treasury, for the purposes therein specified, and shall, within one week after the time specified in his warrant for paying the money directed to be paid to the county treasurer, pay to such county treasurer the sum required in his warrant, either in delinquent taxes, or in funds then receivable by law.

Moneys collected how disposed of by township treasurer.

SEC. 45. If any of the taxes mentioned in the tax list annexed to his warrant shall remain unpaid, and the township treasurer shall be unable to collect the same from the owner or occupant of the premises assessed, he shall make out a statement of the taxes so remaining unpaid and due, with a full and perfect description of such premises from his tax roll, and submit the same to the county treasurer.

Return of taxes not collected.

SEC. 46. The county treasurer shall immediately compare such statement with the tax roll in the hands of such township treasurer, and if he finds it to be a true transcript from the same, he shall add to it a certificate showing that he has examined and compared such statement with the tax roll in the hands of such township treasurer, and found it correct; and shall file such statement, so certified, in his office.

Return to be compared with tax roll, &c.

SEC. 47. Upon making an affidavit to be annexed to such statement, before the county treasurer or his deputy duly appointed, or before any officer authorized to administer oaths, that the sums mentioned in such statement remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattles, belonging to, or in the possession of the person charged with, or liable to pay such sums, whereon he could levy the same, the township treasurer shall be credited by the county treasurer with the amount thereof, and for making the return aforesaid he shall be entitled to receive one dollar and fifty cents, and six cents per mile travel fee one way, to be allowed and paid to him by the county treasurer, together with two per cent. on all taxes returned as delinquent, but no such treasurer shall be allowed more than ten dollars, including said two per cent., for making his returns.

Affidavit of township treasurer; credit for amount returned.

Compensation for making return.

1844, p. 160, § 7.

SEC. 48. Upon the settlement of the amount of taxes directed to be collected by the township treasurer and paid to the county treasurer, such county treasurer shall endorse the bond of the township trea-

Endorsement of satisfaction on bond, and depositing of tax roll and warrant.

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suror as paid up; which endorsement shall operate as a full discharge of the treasurer and his sureties from the obligation thereof, unless it shall afterwards appear that the return of such treasurer is false, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for all damages occasioned by such false return; and the township treasurer shall immediately deposite his tax roll and warrant with the county treasurer, who shall file and preserve the same in his office.

When township board shall appoint treasurer, and proceedings thereupon.

SEC. 49. In case the treasurer of any township shall refuse to serve, or shall die, resign or remove out of the township before he shall have entered upon or completed the duties of his office, or be disabled from completing the same from any cause, the township board shall forthwith appoint a treasurer for the remainder of the year, who shall give like security, and be subject to like duties and penalties, and have the same powers and compensation as the treasurer in whose place he was appointed; and the township clerk shall immediately give notice of such appointment to the county treasurer, but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them.

Money retained by township treasurer, in what order paid out.

SEC. 50. In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him and paid out for the following purposes, and in the following order, viz:

1. The amount raised for general township purposes, to be paid on the order of the township board:
2. The amount raised for school and library taxes, to be paid on the order of the school inspectors, or school district officers, as the case may be:
3. The amount of the highway taxes, to be paid on the order of the commissioners of highways.

Township treasurer to make oath to statement of taxes collected, &c.

SEC. 51. At the time of paying over the moneys collected to the county treasurer, pursuant to the provisions of this chapter, the township treasurer shall make out under oath, a statement of all moneys collected by him on account of taxes, and deliver such statement to the county treasurer, who shall file and preserve the same in his office.

Compensation of treasurer for collecting taxes.

SEC. 52. The township treasurer shall receive four per cent. on the amount collected, which he shall retain out of the moneys collected by him; and in case of a distress and sale of goods or chattles for the payment of any tax, the treasurer may also collect on such sale one dollar and twenty-five cents over and above the tax, as his fees for making such sale, which per centage and fees shall be in full for his services in collecting such taxes.

When supervisor to deliver tax roll and warrant to sheriff, and powers and duties of sheriff thereon.

SEC. 53. In case the township treasurer shall neglect or refuse to file his bond with the county treasurer in the manner, and within the time prescribed by law, and the township board shall fail to appoint a treasurer who shall give such bond and deliver a receipt for the same to the supervisor by the tenth day of November, the supervisor shall deliver the tax roll and warrant to the sheriff of the county, to be executed by himself or his deputy, who shall execute to the county treasurer a like bond as is required of the township treasurers, and make like collections and returns, and shall be entitled to the same compensation allowed to the township treasurers on all taxes so handed over to him for collection; and for the purpose of collecting the same shall

be vested with all the powers conferred upon the township treasurer.

SEC. 54. The township treasurer or other collecting officer, on the receipt of any tax, shall give a receipt for the same, and shall note on his tax roll the payment thereof, and if any such treasurer or other collecting officer shall wilfully return to the county treasurer as unpaid, any taxes which have been paid to him, except where there is a double assessment, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both at the discretion of the court.

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Officer to give receipt on payment of tax, &c.

SEC. 55. If any township treasurer shall neglect or refuse to pay to the county treasurer the sums required by his warrant, or to account for the same as unpaid, as required by law, the county treasurer shall, within ten days after the time when such payment ought to have been made, issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for, together with his fees for collecting the same, of the goods and chattels, lands and tenements, of such township treasurer and his sureties, and to pay the said sums to such county treasurer, and return such warrant, within forty days from the date thereof.

When warrant to issue against township treasurer.

SEC. 56. The county treasurer shall forthwith deliver such warrant to the sheriff of his county, who shall immediately cause the same to be executed, and shall make return thereof to the county treasurer within the time therein specified for the return thereof, and pay to such treasurer the amount required by such warrant, and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on executions.

Warrant to be delivered to and executed by the sheriff of the county.

SEC. 57. If any sheriff shall neglect to return any such warrant, or to pay the money collected thereon, within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall proceed by attachment in the supreme court, or any other court of competent jurisdiction, against such sheriff, to collect the whole sum directed to be levied by such warrant, in the same manner, and with the like effect, as for neglecting to return an execution in a civil suit, and the proceedings thereon shall be the same in all respects.

Proceedings against sheriff for neglect or false return.

SEC. 58. In case the county treasurer shall fail to collect such moneys by attachment, he shall forthwith cause a prosecution to be had against the sheriff and his sureties for the sum due on such warrant, which sum, when collected, shall be paid to the county treasurer.

When county treasurer to prosecute sheriff and his sureties.

SEC. 59. When any county treasurer shall receive from a township treasurer a statement of unpaid taxes on the lands of residents or non-residents, verified according to law, such county treasurer shall enter the same at length on the books in his office provided for that purpose, and he shall make a correct transcript thereof, which shall be compared by the county clerk with the statement of the township treasurer as certified by the county treasurer, and if he finds it to be a true transcript thereof, he shall add to it a certificate that he has examined and compared the same with the certified statement of the township treasurer, and found it correct.

County treasurer to enter returns of lands delinquent for taxes, and make transcript, &c.

SEC. 60. Such transcript, so made out, compared and certified, shall be forwarded by the county treasurer to the auditor general by the first day of March next after the return of such statement; but such

Transcript to be forwarded to auditor general.
1844, p. 160 § 6.

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Real estate assessed to resident—proceeding on return of.

Payment of taxes after return.

Office charges.

Duplicate receipts.

County clerk to enter receipts, and transmit the same to auditor general.

When county treasurer to make return of moneys to state treasurer.

When county treasurer to receive taxes paid to state treasurer.

When county treasurer to pay excess into state treasury.

transcript shall be receivable at any time during said month of March, though forwarded after the first day thereof.

SEC. 61. If the taxes on any real estate assessed to a resident, shall be returned unpaid according to law, the same proceedings shall be had thereon in all respects, as in cases of lands assessed as non-resident.

SEC. 62. Any person may pay the taxes on any parcel of lands returned as aforesaid, or on any undivided share thereof, with interest calculated thereon from the first day of February next after the same were assessed, at the rate of fifteen per cent. per annum, and the office charges, to the treasurer of the county in which the lands are situated, at any time before they are sold for taxes, or to the state treasurer on the certificate of the auditor general, at any time before the first day of September next preceding the time appointed for such sale.

SEC. 63. The county treasurer and auditor general shall add for office charges upon each certificate containing one description, twenty-five cents, and for each additional description in the same certificate, six cents; and the amount received by the county treasurers for charges, shall go into the county treasuries, of which they shall keep an accurate account, and the amount received at the state treasurer's office shall go into the state treasury to the credit of the general fund.

SEC. 64. The county treasurers shall issue duplicate receipts for all taxes received by them, which shall not operate as a discharge of the taxes until countersigned by the county clerk, and one of said duplicates shall be left with such clerk; but no additional charge shall be made for issuing duplicate receipts.

SEC. 65. The duplicates of such receipts shall be filed by the county clerk, who shall make an entry of the amount for which every such receipt was given, with the name of the person paying such tax, in a book to be provided by him for that purpose at the expense of the county; and shall, on the first Monday of each month, forward all the receipts on file in his office to the auditor general, in such manner as he may direct.

SEC. 66. Every county treasurer who shall have received into the treasury of his county sufficient to make up the amount of taxes assessed for county and township purposes, shall make returns, at least once in three months, to the state treasurer, at such times, and in such manner as he shall direct, of the amount received by him for delinquent taxes, payable to such state treasurer.

SEC. 67. Until the several counties which shall have remaining unpaid, more delinquent taxes than the amount of the state tax for the year in which the same were assessed, shall have received the amount raised for township and county purposes, they shall be entitled to receive from the state treasurer at the close of each month, in specie or its equivalent, the amount there received for delinquent county or township taxes returned from the several counties, until they shall [have] received the amounts assessed in such counties for other than state tax.

SEC. 68. Immediately after the returns of the several township treasurers to the county treasurers, in all cases where the amount collected shall exceed the amount raised for county and township purposes, the county treasurers shall forthwith pay into the state treasury the excess collected as aforesaid, for which amount the said counties shall be credited on account of the state tax for the proper year.

Of the Sale of Lands for Taxes, and the Conveyance and Redemption thereof.

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SEC. 69. All lands returned to the auditor general as provided by law, upon which the taxes, interest and charges shall not be paid within one year next after the return thereof, or be charged back to the proper county, shall be subject to sale and redemption as hereinafter provided, and shall be sold in the same county from which they were returned, or in which the lands were situated at the time such taxes were assessed.

What lands to be subject to redemption and sale, and when to be sold.

1844, p. 139, § 5.

SEC. 70. The auditor general shall make out a separate statement of all such lands as the taxes shall remain due upon at the expiration of one year from the return thereof, in each of the respective counties; specifying the amount of taxes due on each parcel, the interest thereon to the first Monday of October thereafter, together with the costs of advertising, postages, expense of sale and returns thereof and conveyances, calculated upon each description by dividing such charges by the whole number of descriptions.

Statement to be made by auditor general.

SEC. 71. The auditor general shall cause each of such statements to be published in the county in which the lands therein described are situate, for eight weeks successively next previous to the first Monday of October in each year, in one newspaper printed and published in such county; if there be one which shall have been established therein six months prior to the first day of April, and in case there is no such newspaper printed and published in the county, such statement shall be printed and published in an adjoining county, if there be such newspaper established therein for the period aforesaid; but if there is no such newspaper printed or published in the same or any adjoining county, such statement shall be printed and published in the state paper.

When and where statement to be published.

1844, p. 161, § 8.

SEC. 72. The newspapers in which such statements are to be published, shall be designated by the auditor general on or before the first day of April in each and every year, and not afterwards, unless the proprietor of any paper so designated shall neglect or refuse to print and publish such statement, or unless from some other cause it shall become impracticable, in which case the auditor general shall designate some other paper for that purpose, before the time limited for commencing the publication.

When paper to be designed by auditor general.

1844, p. 161, § 8.

SEC. 73. The cost of printing and publishing such statements, shall not exceed thirty cents for each description of land so advertised, and no printer shall be paid for publishing any such statement, who shall not forward to the auditor general, within twenty days after the last publication thereof, an affidavit made by some person to whom the facts are known, stating such publication, and also that he has transmitted to each county treasurer by mail, copies of the two first numbers of his paper containing such statement, immediately after their publication.

Cost of printing

1844, p. 161, § 8-9.

SEC. 74. The auditor general shall annex to, and cause to be published with each of said statements, a notice that so much of each tract or parcel of land described in said statement as will be necessary for that purpose, will be sold by the county treasurer on the first Monday of October next thereafter, at such public and convenient place at the seat of justice of the county as the county treasurer may select, for the payment of the taxes, interest and charges thereon.

Notice to be published with statement.

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List to be transmitted by auditor general to county treasurer &c.

SEC. 75. As soon after the first Monday of September as shall be practicable, the auditor general shall prepare and transmit, to the several county treasurers, lists of all lands described in the respective statements, on which the taxes, interest and charges shall have been paid; which lands, together with all the lands whereon the taxes, interest and charges shall have been paid to the county treasurer before the sale, shall be struck from the statement of lands advertised to be sold by the respective county treasurers, and shall be withheld from sale.

Sale how made.

1844, p. 162, § 11.

It.

SEC. 76. On the day designated in the notice of sale, the several county treasurers, under the direction of the auditor general, shall commence the sale of those lands on which the taxes shall not have been paid as aforesaid, and shall continue the same from day to day (Sundays excepted) until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest and charges thereon.

SEC. 77. In case less than the whole of any parcel described in the statements aforesaid, shall be sold for the taxes, interest and charges thereon, the portion thereof sold shall be taken from the north side, or north end of such parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, unless the same be an irregular fraction, in which case the portion thereof so sold shall be bounded on the south by a line running due east and west.

Payment of bids, when to be made &c.

SEC. 78. The county treasurers may, in their discretion, require immediate payment of every person to whom any parcel of such land shall be struck off, and in all cases where payment is not made in twenty-four hours, he may declare the bid canceled, and at his discretion sell the lands again; and any person so neglecting or refusing to pay any bid made by him, shall not be entitled after such neglect, to have any bid made by him received by the treasurer during such sale.

Funds receivable at sales.

SEC. 79. The several county treasurers shall receive on such sales, such funds only as shall, at the time, be receivable by law at the state treasury on account of the general and delinquent tax funds; and so much as may be necessary to pay for printing, and charges of sales, shall be paid in specie or its equivalent.

Notice of amount to be paid in specie, state treasurer to direct remittances, &c.

SEC. 80. The state treasurer shall notify the county treasurers what amount must be paid in specie or its equivalent; and the remittance of all moneys received at tax sales shall be made as directed by the state treasurer, and the expenses of advertising and sale shall be paid therefrom on the auditor general's warrant, and the remainder shall be placed to the credit of the general fund as received.

Certificate of sale, &c.

SEC. 81. At the sale aforesaid, the respective county treasurers shall give to the purchasers, on the payment of their bids, a certificate in writing, describing the lands purchased, and the amount paid therefor; and shall endorse thereon the kind of funds received; and such certificate shall be regularly numbered, and a copy of each forwarded by the county treasurers to the auditor general, in such manner as he shall direct.

Deed to purchaser.

SEC. 82. On the presentation of such certificate of sale to the auditor general, after the expiration of the time provided by law for the redemption of lands sold as aforesaid, he shall execute to the purchaser, his heirs and assigns, a deed of the land therein described, unless he shall have discovered that the same was improperly sold, which deed shall be prima facie evidence of the regularity of all the pro-

ceedings from the valuation of the land by the assessors, to the date of the deed inclusive; but such lands shall be subject to all unpaid taxes properly chargeable thereon.

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Sec. 83. Any person claiming any of the lands sold as aforesaid, or any interest therein, may at any time within one year next succeeding the sale, redeem any parcel of said lands, or any part or interest in the same, by paying into the state treasury the amount for which such parcel was sold, or such proportion thereof as the part or interest redeemed shall amount to, with interest thereon at the rate of twenty-five per cent. per annum; of which interest twenty per cent. shall be paid by the state treasurer to the purchaser, and five per cent. shall belong to the state, and be passed to the credit of the general fund.

How lands may be redeemed.

1835, p. 79, § 2.

Sec. 84. When any such land shall be redeemed as provided in the preceding section, the interest shall in all cases be computed from the day of sale, up to the end of the current quarter of the year limited for such redemption.

Interest, how computed.

1845, p. 79, § 2.

Sec. 85. If any parcel of land cannot be sold to any person for the taxes, interest and charges, such parcel shall be passed over for the time being, and shall, on the succeeding day, or before the close of the sale, be re-offered; and if, on such second offer, or during such sales, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same for the state.

When lands to be re-offered for sale, and when bid in for the state.

Sec. 86. All lands bid off for the state as provided in the last preceding section, shall continue liable to be taxed, in the same manner as if they were not the property of the state, and such taxes shall be a charge upon such lands.

Lands bid off for state liable to taxation.

Sec. 87. If the auditor general shall discover before the sale, or before the conveyance of any lands as aforesaid, that on account of irregular assessments, or for any other cause, any of such lands ought not to be sold or conveyed, he shall forbear to cause the same to be sold, or withhold a conveyance, after sale, as the case may be; and in such case, if a sale has been made, he shall, on demand, cause the money paid therefor to be refunded.

Proceedings in case of irregularity.

Sec. 88. If such errors originated with the county or township officers, the amount so refunded shall be charged against the county from which the tax was returned, and the supervisors of such county shall cause the same to be refunded to the state treasury.

When amount refunded to be charged against county.

Sec. 89. If, after the conveyance of any land sold for taxes, the auditor general shall discover that the sale was invalid, he shall, on demand, cause the money paid therefor to be refunded, with seven per cent. interest; and in all such cases, when the auditor general, deeming a title invalid, shall have offered to the purchaser his money and interest upon a delivery and cancelment of the deed, and the purchaser shall have refused to receive the money and cancel the deed, such purchaser shall never be entitled to receive any more than the purchase money and seven per cent. interest thereon to the day of such offer and refusal.

If sale found to be invalid after conveyance, amount paid to be refunded, &c.

Sec. 90. Such money, when paid by the state treasurer, shall be refunded to the state treasury by the proper county, and in any action of ejectment brought by the owner to recover such lands, the state shall not be liable to costs.

Money to be refunded by county—state not to be liable for costs.

Sec. 91. The auditor general shall state the accounts of the several county treasurers, on the first day of July in each year, allowing to the several counties ten per cent. interest on such portion of the taxes un-

Accounts of county treasurers to be stated by auditor general.

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paid on the first day of February in the same year, as shall belong to them for township and county purposes, and shall transmit a copy thereof by mail, or otherwise, to the county clerk, who shall lay the same before the board of supervisors at their first meeting after the receipt of the same.

Of Rejections and Re-assessments.

When tax rejected, &c., supervisors to correct errors, &c.

SEC. 92. Whenever the county treasurer shall be notified by the auditor general, or shall otherwise become satisfied that any tax has been paid to the township treasurer, or that there was a double assessment upon any lands, or that any parcel is so erroneously or defectively described that it cannot be sold, he shall deliver to the board of supervisors an accurate statement thereof, and the said board shall cause the same to be re-assessed upon the same land in the next year's tax, or raise the amount upon the proper township, or otherwise correct such errors as they shall consider just.

How rejected taxes, &c., to be charged back.

SEC. 93. The auditor general is authorized and required, in all cases where taxes upon lands returned delinquent to his office, shall be rejected for any cause, or having been credited, shall be charged back on the books of his office, to charge the same over to the county from which such taxes were returned, unless the lands upon which the same were assessed shall have been set off to some other county, or attached to some other county for judicial purposes, and in case such lands shall have been so set off or attached, they shall be charged to the county to which they may belong at the time of such rejection.

Supervisors to furnish list of lands detached from county on which taxes are charged back.

SEC. 94. It shall be the duty of the board of supervisors to furnish to the auditor general a list of all taxes which shall have been rejected or charged back to their county by him, upon lands which shall have been detached from such county subsequent to the time when such taxes were assessed; and the auditor general shall thereupon credit to such county the amount which he may have so charged back, and charge the same to the county in which such lands may be then situated, provided such taxes shall not have been previously paid or re-assessed.

Auditor general to forward to county treasurer a description of lands, &c.

SEC. 95. The auditor general, immediately after ascertaining the amount of taxes, interest and charges, due upon any lands which have been or may hereafter be rejected or charged back as hereinbefore provided, shall forward to the treasurer of the county in which such lands shall then be situated, or to which they may be attached, a description of such lands, together with a statement of the amount of taxes, interest and charges thereon, and specifying for what year or years such taxes were originally assessed.

County treasurer to lay statement before board of supervisors.

SEC. 96. The county treasurer receiving such statement shall lay the same before the board of supervisors at their next session thereafter, and if such taxes shall have been rejected or charged back by the auditor general for any informality not affecting the legality of the assessment, the board of supervisors shall cause the same to be re-assessed upon the same land, and collected with the taxes of the then current year, and in the same manner.

Proceedings when taxes cannot be re-assessed on some lands.

SEC. 97. If such taxes cannot be properly re-assessed upon the same lands, the board of supervisors shall cause the same or any part thereof, to be re-assessed upon the taxable property of the proper township, as may appear equitable.

SEC. 98. Whenever the auditor general shall have rejected any



state, county, or township tax, for the reason that the amount assessed for any such purpose exceeds the limitation established by law, the county treasurer of the county in which the lands so assessed shall be situated, shall make out and present to the board of supervisors thereof at their next session, a list of the lands, with the taxes assessed, and the interest accrued thereon.

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Proceedings
when tax ex-
ceeds limit fixed
by law.

SEC. 99. The board of supervisors shall cause so much of said taxes as shall remain unpaid, and as shall not exceed the limit fixed by law, for the year in which they were originally assessed, to be reassessed upon the same lands, if they can legally do so, and collected with, and in the same manner as the taxes for the year in which the same shall be reassessed as aforesaid.

SEC. 100. If any such taxes cannot be properly reassessed upon the same lands, the board of supervisors shall cause the same, or any part thereof, under the limitations aforesaid, to be assessed upon the taxable property of the proper township, as may appear equitable.

Of Lands bid in for the State at Tax Sales.

SEC. 101. No land bid in for the state at the sales of lands for taxes, agreeably to the provisions of this chapter, shall be offered for sale for any year's tax levied subsequent to that for which it was so bid in, until it shall have been redeemed, or sold as hereinafter provided; but upon the amount of taxes due at the time when it would have been so offered had it not been previously bid in for the state, interest shall be charged at the rate of twenty-five per cent. a year to the time of redemption or sale as provided in this chapter.

Lands bid in for
the state, not to
be sold, but inter-
est to be charged

1845, p. 79.

SEC. 102. Any person may redeem any lands, or any part or interest which shall be clearly defined in any lands, heretofore bid in, or that may hereafter be bid in for the state, at any time before the same shall be sold, as hereinafter directed, by paying into the state treasury, on the certificate of the auditor general, the amount of taxes for which the same were so bid in, with interest thereon, at the rate of twenty-five per cent. from the day of sale to the day of redemption, together with all taxes, interest and charges that shall remain unpaid on said lands in the office of the auditor general at the time of such application, and not otherwise.

Redemption of
lands bid in for
state.

SEC. 103. The auditor general shall furnish to each of the county treasurers, on or before the first day of August in each and every year, a full and accurate statement of all lands in his county that may have been bid in for the state, on which the time of redemption would have expired, had the same been sold to individuals, and which shall remain unredeemed until the first day June next previous to said first day of August.

List of lands bid
in for the state,
&c., to be furnish-
ed by auditor
general.

SEC. 104. Such list shall exhibit the aggregate amount of all sums due to the state on each description of land for redemption from sale, including interest thereon, and all taxes which shall have remained in the office of the auditor general unpaid on the said first day of June, with interest and charges thereon, which interest shall be computed to the first Monday of October in the same year.

Contents of list

SEC. 105. The auditor general shall cause such statement to be published for six weeks successively, next previous to the first Monday of October, in the manner provided by law for the publication of lands delinquent for taxes, and shall cause to be published therewith a notice that the lands described in such statement will be sold at pub-

Statement and
notice of sale to
be published.

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lic auction by the treasurer of the county in which such lands are situated, at the time and place designated for the ordinary tax sales, under the direction of the auditor general.

Minimum bid to be stated in notice.

SEC. 106. Such notice shall also state that the minimum bid receivable at such sale, shall be the aggregate of the taxes, interest and charges aforesaid, as exhibited in such statement.

Certificates to purchasers.

SEC. 107. The county treasurer shall, on payment of the purchase money at such sale, issue certificates of sale to the purchasers, in such form, and make such returns to the auditor general as shall be prescribed by him, and shall also transmit the monies received on such sales to the state treasurer, in such manner as he shall have directed.

Sale how conducted.

SEC. 108. At the time designated in the notice, or immediately after the sale of other lands advertised to be sold for taxes at the same time, each county treasurer shall commence the sale at the place designated, and continue the same from day to day if necessary, (Sundays excepted,) until he has offered all the lands embraced in his list, which shall not have been redeemed, or otherwise discharged; and he may re-offer and sell any parcel when a bidder shall refuse to pay his bid, for twenty-four hours after the lists have been gone through; or he may, in his discretion, demand immediate payment, and if not paid, cancel the bid, and re-offer the lands.

Deed to purchaser.

SEC. 109. The auditor general shall, on the presentation of the certificate of sale at his office, or as soon thereafter as may be, execute a deed of the lands to the purchaser or his assigns, which shall convey all the right acquired by the state under the original sale or sales, subject to all taxes duly assessed on the lands described therein, and such deed shall be prima facie evidence of the correctness of all the proceedings to the date of the deed, and of title in the grantees therein named, and when duly acknowledged, may be recorded and admitted in evidence in the same manner as other deeds of conveyance.

When auditor general may cancel sale, and refund purchase money.

SEC. 110. The auditor general shall have power, and it shall be his duty, at any time within two years from the date of any such sale, to cancel the same, in all cases where the original sale to the state shall be shown to his satisfaction to have been invalid for any cause, and in such case he shall draw his warrant on the state treasurer for the amount of purchase money, and interest at the rate of seven per cent. in favor of the purchaser or his assigns, and such lands may thereafter be sold for any tax levied thereon subsequent to the tax for which it was bid in for the state, in the same manner as other lands may be sold for taxes, and with the same effect.

Purchasers not entitled to interest after notice.

SEC. 111. No person who shall refuse to receive back his purchase money and interest, and surrender his deed, shall be entitled to any interest after he shall have been notified by the auditor general that the sale has been canceled.

When lands to be struck from the assessment roll.

SEC. 112. All lands which shall be offered at public auction as aforesaid, on which no bid is made equal to the minimum price designated, and which shall not be redeemed or otherwise discharged from the taxes due thereon, prior to the first day of March succeeding the time of offering them, shall be struck from the assessment rolls, and not again assessed until they are sold by, or redeemed from the state.

SEC. 113. The auditor general shall, in the month of March in each year, transmit to the several county clerks and county treasurers, lists of all lands to be so struck from the assessment rolls in their

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respective counties, and lists of such as have been previously struck from the rolls, but are to be restored and again assessed; and the said clerks respectively, on or before the first Monday of April thereafter, shall transmit a list to the several supervisors, designating such lands in their respective townships as are to be left out of the assessment roll, and such as have been previously left out, but are to be restored.

List of lands to be struck from rolls, and of lands to be returned, to be sent to county clerks, and their duty thereupon.

SEC. 114. The purchaser of any lands bid in for the state at a tax sale, and sold pursuant to the provisions of this chapter, on application to the auditor general for a deed, shall pay an office charge of twenty-five cents for the first, and six cents for each subsequent description contained in such deed, which shall be paid into the state treasury to the credit of the general fund.

Payment to be made by purchaser, for deed.

SEC. 115. There shall be paid for publishing the statements and notices of sales of lands bid in for the state as aforesaid, the same compensation allowed by law for publishing the lists and notices of sales of lands delinquent for taxes for the current year, which shall be audited and allowed by the auditor general, together with the expenses of the sale, and postages, and paid out of the general fund on the warrant of the auditor general.

Compensation for publishing statements.

SEC. 116. In case it shall become necessary in the prosecution of an action of ejectment by any person having an adverse claim to any land bid in for the state as provided in this chapter, the officer having charge of the land in behalf of the state, may be made defendant.

Officer having charge of land when to be made defendant.

Miscellaneous Provisions.

SEC. 117. Any person who has a lien upon any lands returned for non-payment of taxes, may pay the taxes, interest and charges thereon, and the receipt of the county treasurer or state treasurer therefor duly countersigned, shall constitute an additional lien on such land to the amount therein specified; and the amount so specified shall be collectable, with interest thereon, in the same manner as the original lien.

Payment of taxes by person having lien.

SEC. 118. If any township clerk or assessor shall wilfully neglect or refuse to perform any of the duties required of him by the provisions of this chapter, he shall forfeit and pay a sum not exceeding one hundred dollars.

Penalty on clerks and assessors for neglect, &c.

SEC. 119. The board of supervisors of each county shall, at their annual session in each year, transmit to the prosecuting attorney, the names and places of abode of all township clerks and assessors within their county, who shall have incurred any forfeiture under the provisions of this chapter, and such prosecuting attorney shall immediately prosecute for such forfeiture.

Supervisors to transmit names, &c., of clerks and assessors who have incurred penalty, to prosecuting attorney, &c.

SEC. 120. All losses that may be sustained by the default of the treasurer of any township shall be chargeable on such township; and all losses that may be sustained by the default of any county treasurer in the discharge of the duties imposed by this chapter, shall be chargeable on such county, and the board of supervisors of such county shall add such losses to the next year's taxes of such township or county.

Losses, by whom sustained in certain cases.

SEC. 121. The auditor general shall, from time to time, furnish suitable blanks in addition to those required by the preceding provisions of this chapter, for returns of unpaid taxes, receipts, and certificates of sale, which shall be sent to the several county treasurers.

Auditor general to furnish blanks

SEC. 122. The assessors of the several wards in the city of Detroit,

Who to act as supervisor, &c., in city of Detroit.

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1842, p. 101, § 96,
1843, p. 84, § 80.

Auditor general
to publish and
transmit copies
of this chapter
with suitable
forms, &c.

shall have and exercise the powers and duties of supervisors, and the collectors of the several wards of said city shall have and exercise the powers and duties of township treasurers, under the provisions of this chapter.

SEC. 123. The auditor general shall, from time to time, whenever he shall find it necessary, cause to be printed at the expense of the state, a sufficient number [of copies] of this chapter, with such forms of proceeding under the same as may be necessary and proper, to furnish one copy to each supervisor, township treasurer, assessor, township clerk, and county clerk, and three copies to each county treasurer; and shall transmit to each county treasurer, at the expense of the county, a sufficient number for such county; and every county treasurer receiving such copies shall immediately transmit to the township clerk of each township, five copies, to be distributed by him to the officers entitled thereto.

Wilful neglect of
duty to be deem-
ed misdemeanor,
& how punished.

SEC. 124. Any officer who shall wilfully neglect or refuse to perform any of the duties imposed upon him by this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, in the discretion of the court.

Proceeding on
contested claims
to surplus on
sale of property
distrained for
taxes,

SEC. 125. Whenever a surplus arising from the sale of any property distrained for taxes, shall be claimed by any other than the person for whose tax such property was sold, and such claim shall be contested by such person, such claimant may prosecute an action against such person; or the person for whose tax such property was sold may prosecute such action against such claimant, as for money had and received; in which action the right of the respective parties to such surplus shall be tried and determined.

Ib.

SEC. 126. For the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the township treasurer, and upon the presentation to such treasurer of a certified copy of the final judgment rendered in such action, the said treasurer shall pay over the same to the party recovering such judgment; and no township treasurer shall be liable to any claimant of such surplus, the right to which is contested as provided in this chapter, until he shall have refused to pay over such surplus upon the production of a certified copy of a judgment as aforesaid.

Judgment and
execution.

SEC. 127. In any action brought pursuant to the two last preceding sections, no other cause of action shall be joined, nor shall any set off be allowed; and if an execution issue on a judgment so rendered, it shall direct the costs only of such action to be levied by virtue thereof.

Remedy of own-
er in case prop-
erty sold for tax of
another.

SEC. 128. When any property shall be legally distrained and sold for the tax of any person, and such property shall be owned by another person, such owner may recover of the person for whose tax the same was sold, the value of such property, in an action of assumpsit, as for goods sold and delivered, deducting therefrom the amount of any surplus which may have been claimed or recovered by such owner as provided in this chapter.

Prosecuting at-
torneys to give ad-
vice without
charge.

SEC. 129. It shall be the duty of the prosecuting attorney of each county, to give his counsel and advice to the county treasurer, and the supervisors of the county, whenever they, or any of them, may deem it necessary for the proper discharge of the duties imposed upon them in this chapter, free of charge.

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OF SPECIFIC STATE TAXES AND DUTIES.

Tax upon Banks.

SECTION 1. Every bank now incorporated, or hereafter to be incorporated, shall pay a yearly tax of one and one half per cent. on the amount of capital stock paid in; one half thereof on or before the first Monday of April, and the other half on or before the first Monday of October in each year; which tax shall be in lieu of all state, county, township or other taxes in this state, on the capital stock of said banks, and of all state tax imposed by the charter of any such bank heretofore incorporated.

Tax on capital
stock of banks.

SEC. 2. Any portion of the capital stock of any bank, which shall, in accordance with the provisions of its charter and the laws of this state, have become vested in real or personal estate within this state, subject to taxation, and which shall be actually assessed within this state, for ordinary state, county, and other taxes, upon proof thereof to the satisfaction of the state treasurer and attorney general, shall be exempt from said tax of one and one half per cent. for the year succeeding said assessment, to the amount of the valuation of such property on the assessment roll.

When certain
portion of stock
exempted.

SEC. 3. If any part of the capital stock of any bank shall have been paid in within six months next before either of the days specified for the payment of said tax, the tax on such part shall be paid in proportion to the time that shall have elapsed after such part of the capital stock shall have been paid in.

When stock paid
in within six
months.

SEC. 4. If any bank shall neglect to make such payment, the state treasurer shall forthwith notify the attorney general thereof, who shall thereupon immediately institute proceedings against such delinquent bank, by bill in chancery, or by an action at law, for the recovery of such tax, with interest and costs, in the same manner, and with the like effect, as is hereinafter provided in cases of delinquent railroad, canal, and turnpike corporations.

Proceedings in
case of neglect
to pay tax.*Tax upon Railroad, Canal, and Turnpike Corporations.*

SEC. 5. Every company heretofore incorporated or hereafter to be incorporated within this state, for the purpose of constructing and using any railroad, canal or turnpike therein, shall pay a yearly tax to the state of three-fourths of one per cent. on the amount of the capital stock of such company paid in or secured to be paid, which tax shall be paid into the state treasury by said corporations respectively, on or before the first Monday of October in the year one thousand eight hundred and forty-seven, and in each year thereafter.

Tax on capital
stock of railroad
and other corpo-
rations.

SEC. 6. Such tax shall be in lieu of all state, county, township or other taxes in this state, on the capital stock of said corporations, and on the railroad, canal or turnpike constructed or used by any such corporation, and on all the real and personal property in which said capital stock shall be invested, and which shall be used and occupied by any such company, in accordance with the provisions of its charter, and the laws of this state, in the construction or use of such railroad, canal or turnpike.

Such tax to be in
lieu of all other
taxes.

SEC. 7. If any such incorporated company shall neglect or refuse to pay the tax aforesaid, on or before the said first Monday of Octo-

Proceeding in
case of neglect
to pay.

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ber, the state treasurer shall immediately furnish the name of every such company so neglecting or refusing to pay such tax, to the attorney general, with the amount due from each; and the attorney general shall thereupon file a bill in the court of chancery, against every such company, for the discovery and sequestration of its property.

Sequestration,
injunction, &c.

SEC. 8. The chancellor, on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered, as he shall deem necessary for satisfying the taxes in arrear, with the costs of prosecution; and he may also, at his discretion, enjoin such company and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings as he may deem necessary to compel the payment of such tax and costs.

Proceedings at
law to recover
tax.

SEC. 9. The attorney general may also recover such tax, with costs, from such delinquent company, by action in the name of the people of this state in any court of competent jurisdiction.

Brokers and Exchange Dealers.

No person to be
broker, &c.,
without license.

SEC. 10. No person shall be engaged in the business of a broker, or of buying or selling current or uncurrent money, or bank notes, or in the exchange thereof, or in the exchange of coins, without first paying into the state treasury the sum hereinafter mentioned, and obtaining a license from the state treasurer, to carry on the business of a broker and exchange dealer, in the manner hereinafter provided, except as provided in the next section.

1842, p. 56.

Prohibition not
to apply to cer-
tain corporations
and persons.

SEC. 11. The prohibition in the preceding section contained shall not apply to corporations authorized by law to carry on the business of exchange, and the buying and selling of money, nor to persons engaged in commercial or mercantile operations, as forwarders, dealers in products of the country, grocers, merchants and millers, or others whose regular business, other than that of brokers and exchange dealers, renders the purchase and sale of exchanges, or the purchase or sale of current or uncurrent money, a legitimate part of their said business or corporation (*occupation*).

Proceedings to
obtain license.

SEC. 12. Any persons desiring to carry on the business of brokers and exchange dealers as aforesaid, may, before commencing such business, obtain from the treasurer of this state a license for each office or concern which they propose to establish; for which purpose they shall file with the said treasurer a certificate, specifying:

1. The name of every person who is to be connected with such business, and constitute a part of the firm:

2. The actual amount of capital to be invested in the business of the concern, and the precise amount that each partner is to put in:

3. The city or village, township and county wherein said business is intended to be carried on; which said certificate shall be duly verified by the oath of the party applying for the license.

Amount to be
paid before li-
cense granted.

SEC. 13. The persons applying for such license shall, at the time of filing such certificate, pay to the state treasurer therefor at the rate of one and one half per cent on the amount of the capital stock to be used in such business; whereupon the said treasurer shall grant, under his hand and official seal, to the person or persons applying therefor, a license to carry on the business of brokers and exchange dealers with the capital mentioned in the certificate, and at the place therein specified, for a term not exceeding one year from the date

thereof; but such license may be renewed annually, from time to time, upon payment therefor at the rate aforesaid; and the proceeds of all such licenses shall be placed to the credit of the general fund.

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SEC. 14. If any person shall carry on the business of a broker or exchange dealer, contrary to the provisions of this chapter, such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not less than one hundred nor more than two thousand dollars, in the discretion of the court.

Violation of prohibition to be deemed a misdemeanor.

SEC. 15. Every person who shall obtain a license to carry on the business of a broker and exchange dealer, as provided in this chapter, before he commences the business, shall make and file with said state treasurer, an affidavit, stating therein that he has not, and will not have any connection, directly or indirectly, with any bank or banks, and that no bank is or shall be entitled to any share of the profits of such business.

Affidavit to be filed.

Hawkers and Pedlars.

SEC. 16. No person shall be authorized to travel from place to place within this state, for the purpose of carrying to sell, or exposing to sale any goods, wares or merchandize, unless he shall have obtained a license as a hawker and pedlar, in the manner hereinafter directed.

No person to be a hawker and pedlar without license.

SEC. 17. Every person desirous to obtain a license as a hawker or pedlar, shall apply to the treasurer of this state, and shall deliver to him a note in writing, signed by such applicant, stating in what manner he intends to travel and trade, whether on foot, or with one or more horses, or other beasts of burthen, or with any sort of carriage.

Application for license as hawker and pedlar.

SEC. 18. Every such applicant, before he shall be entitled to a license, shall pay into the state treasury the following duties: if he intend to travel on foot, the sum of ten dollars; if he intend to travel and carry his goods with a single horse or other beast carrying or drawing a burthen, the sum of twenty-five dollars; and if he intend to travel with any vehicle or carriage drawn by more than one horse, or other animal, the sum of fifty dollars.

Payment of duties.

SEC. 19. Upon the presentation of such note in writing, and the payment of the proper duties herein required, the state treasurer shall grant to such applicant, a license under his hand and seal of office, and authorizing such applicant to travel and trade as a hawker or pedlar, in the manner stated in such note, for the term of one year from the date of the license.

When treasurer to grant license.

SEC. 20. All licenses to hawkers and pedlars, shall be issued in the month of April in each year, and at no other time; and every license granted, or to be granted, for the purposes aforesaid, shall be renewed annually by the state treasurer, if such renewal be applied for, on the same terms and conditions that the original license was granted.

Licenses to be issued in April, and may be renewed annually.

SEC. 21. Every person who shall be found traveling and trading within the limits of this state, contrary to the provisions of this chapter, or contrary to the terms of any license that may have been granted to him as a hawker or pedlar, shall, for each offence, forfeit the sum of twenty-five dollars.

Penalty for hawking, &c., without license.

SEC. 22. Nothing contained in this chapter shall be construed to prevent any mechanic residing in this state, from selling his work any where in the state.

Construction.

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Penalty for refusing to produce license.

Costs in case of prosecution.

Limitation of prosecutions for penalty.

How person may become an auctioneer.

1839, p. 145.

For what term.

Auctioneer to render statement on oath.

Delivery of statement and payment of duties.

County treasurer to forward statement to auditor general, and pay over duties.

Articles subject to duties.

SEC. 23. Every person who shall be found traveling and trading as aforesaid, and who shall refuse to produce a license as a hawker or pedlar, to any officer or citizen who shall demand the same, shall, for each offence, forfeit the sum of ten dollars.

SEC. 24. In every case of a prosecution against any person for the recovery of any penalty given in this chapter, no costs shall be allowed to the defendant, if it shall appear that before the commencement of the prosecution, such defendant had refused to produce his license, or to disclose his name when lawfully required.

SEC. 25. No prosecution for the recovery of any penalty imposed for any violation of the provisions of this chapter, relating to hawkers and pedlars, shall be maintained, unless it shall be brought within sixty days after the commission of the offence charged.

Of Auctioneers, and of Duties upon Sales at Auction.

SEC. 26. Any citizen of this state may become an auctioneer within the county in which he resides, on executing and delivering to the treasurer of such county, a bond in the penal sum of two thousand five hundred dollars, with two or more sufficient sureties to be approved by such treasurer, conditioned for the payment to such treasurer, of all auction duties upon goods or property which may be sold by him, according to law.

SEC. 27. Every person who shall have executed and delivered such bond to the county treasurer, shall, for the term of four years next after the date of such bond, be an auctioneer within such county, and be authorized to carry on and perform the business of an auctioneer, and shall conform to the provisions hereinafter contained.

SEC. 28. If such auctioneer reside in either of the cities of this state, he shall, on the first Monday of each month, and if he reside in any other place, then on the first Monday of April and October in each and every year, make out a statement in writing, verified by his oath, and deliver the same to the county treasurer, in which statement he shall designate particularly :

1. The sums for which all the goods at every auction held by him after delivering such bond, or the date of his last preceding statement, were sold :

2. The days on which sales were so made by him, and the amount of sales on each day :

3. The amount of duties chargeable under the provisions of this chapter.

SEC. 29. Every such statement, verified as aforesaid, shall, within ten days after the date thereof, be delivered by such auctioneer to the treasurer of the county in which he resides, and such auctioneer shall, at the time of delivering such statement, pay over to such county treasurer the duties chargeable by law upon the sales specified in such statement, and take the treasurer's receipt therefor, which receipt shall be countersigned by the clerk of the same county, who shall make an entry of the amount thereof, in a proper book to be kept by him for that purpose.

SEC. 30. Each county treasurer shall, immediately after receiving such statement, forward the same to the auditor general, and shall pay over all auction duties received by him to the state treasurer, in such manner as such treasurer shall direct.

SEC. 31. The following articles, and no others, shall be subject to the payment of the following duties, if sold at auction :

1. All ardent spirits, wines, and intoxicating liquors, whether foreign or domestic, shall be liable to the payment of a duty of two and a half per cent. : TITLE V.
CHAPTER 21.

2. All goods, wares, and merchandize of every description imported from any place without the United States, shall be liable to the payment of a duty of one and a half per cent. at each and every time they are so exposed for sale.

SEC. 32. Goods and chattles otherwise liable to auction duties, shall be exempt therefrom if sold under the following circumstances : When chattels
exempt.

1. If they shall belong to the United States, or to this state :

2. If they shall be sold in pursuance of any judgment, order or decree of any court of law or equity, or under any seizure or distress by any public officer :

3. If they shall belong to an estate of a deceased person, and be sold by his executors or administrators, or by any other person duly authorized by any judge of probate :

4. If they shall be the effects of a bankrupt or insolvent, and be sold by his assignee, appointed pursuant to law, or by a general assignment for the benefit of the creditors of such bankrupt or insolvent.

SEC. 33. All goods, property and effects, liable to the payment of duties, shall, in all cases when sold at auction, be struck off to the highest bidder, and when the auctioneer, or owner, or any person employed by them or either of them, shall be such bidder, they shall be subject to the same duties as if struck off to any other person ; but this section shall not be construed to render valid any sale which would otherwise be deemed fraudulent and void. Sales, how made,
&c.

SEC. 34. All duties shall be calculated on the sums for which the goods and property exposed for sale shall be respectively struck off to the purchaser thereof. Duties, how cal-
culated.

SEC. 35. If any person shall act as an auctioneer in the sale of any goods or property liable to the payment of duties under the provisions of this chapter, without first having delivered to the county treasurer the bond herein required, such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars. Persons acting
without authori-
ty, guilty of mis-
demeanor.

TITLE VI.

OF HIGHWAYS, BRIDGES AND FERRIES.

- Chapter 22. Of the Officers having the Care and Superintendence of Highways and Bridges, and their general Powers and Duties.
- Chapter 23. Of the persons liable to work on Highways, and making Assessments therefor.
- Chapter 24. Of the Duties of Overseers in regard to the Performance of Labor on Highways ; and of the Performance of such Labor or commutation therefor, and the application of Moneys by the Commissioners.
- Chapter 25. Of Laying out, Altering and Discontinuing Public Roads.
- Chapter 26. Of the Obstruction of Highways, Encroachments thereon, and Penalties.
- Chapter 27. Of the Erection, Repairing and Preservation of Bridges.
- Chapter 28. Miscellaneous Provisions of a general nature.
- Chapter 29. Of the Regulation of Ferries.

CHAPTER 22.

OF THE OFFICERS HAVING THE CARE AND SUPERINTENDENCE OF HIGHWAYS AND BRIDGES, AND THEIR GENERAL POWERS AND DUTIES.

Commissioners
of highways,
their duties,

SECTION 1. The commissioners of highways in the several townships in this state, shall have the care and superintendence of highways and bridges therein, and it shall be their duty,

1. To give directions for the repairing of roads and bridges within their respective townships :

2. To regulate the roads already laid out, and to alter such of them as they shall deem inconvenient :

3. To cause such of the roads used as highwys, as have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the township clerk's office :

4. To cause the highways, and the bridges over streams intersecting highways, to be kept in repair :

5. To divide their respective townships into so many road districts as they shall judge convenient, by writing, under their hands, to be entered of record in the township clerk's office ; but no such division shall be made within five days next preceding the annual township meeting :

6. To assign to each of said districts, such of the inhabitants liable to work on highways as shall reside in such district, or own lands therein : and,



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7. To require the overseers of highways, from time to time, and as often as they shall deem it necessary, to have all persons assessed to work on the highways, perform their labor thereon with such teams, carriages, sleds or implements as said commissioners, or any of them shall direct.

SEC. 2. The commissioners of highways shall have power, in the manner and under the restrictions hereinafter provided, to lay out and establish, upon actual survey, such new roads in their respective townships as they may deem necessary; and to discontinue such old roads and highways as shall appear to them to have become unnecessary.

To lay out and discontinue roads.

SEC. 3. The commissioners of highways of each township shall render to the township board, at the annual meeting of such board in each year, an account in writing; stating,

To render account to township board.

1. The labor assessed and performed in their township:

2. The sums paid for delinquencies and commutations, and other moneys received by them, and the application thereof:

3. The improvements which have been made on the roads and bridges in their township during the year preceding such report, and the condition of such roads and bridges: and,

4. The improvements necessary to be made on the same, and an estimate of the probable expense thereof beyond what the labor to be assessed in that year will accomplish.

SEC. 4. The township board shall cause such statement to be presented at the then next annual township meeting, and such meeting may vote for the raising of such sum, not exceeding two hundred and fifty dollars in any one year, for the improvement of the roads and bridges within the township, as a majority of the electors present shall deem necessary; and the sum so voted shall be levied and collected in the same manner as other township expenses.

Statement to be presented at township meeting; moneys may be voted and collected.

SEC. 5. It shall be the duty of the overseers of highways,

1. To repair and keep in order the highways, within the several districts for which they shall have been elected or appointed respectively:

Duties of overseers.

2. To warn all persons assessed to work on the highways in their respective districts, to come and work on such highways according to law:

3. To cause the noxious weeds within the limits of the highways in their respective districts, to be cut down or destroyed twice in each year, once before the first day of July, and again before the first day of September; and the requisite labor shall be considered highway work: and,

4. To collect all sums due for delinquencies and commutation money, and to execute all lawful orders of the commissioners of highways.

SEC. 6. It shall also be the duty of the overseers of highways, once in every month, from the first day of April to the first day of December, to cause all the loose stones lying on the beaten track of every road within their respective districts, to be removed.

To remove loose stones.

SEC. 7. Two-thirds of the assessment of highway taxes, shall be collected from all the resident inhabitants in each district, before the first day of July, and all the remainder of said assessment in the discretion of the overseer.

When assessments to be collected.

SEC. 8. The commissioners of highways of each township shall

Guide posts.

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CHAPTER 23.**

**Scrapers and
ploughs.**

**Excess of work
by overseer, how
paid for.**

**When commis-
sioners to appoint
overseer, &c.**

**Warrant to be
filed, notice to be
given, &c.**

**Penalty for neg-
lect, &c., by
overseer.**

**When commis-
sioners to prose-
cute for penalty.**

cause guide-posts, with proper inscriptions and devices thereon, to be erected and kept in repair at the intersection of all post roads in their township, and at the intersection of such other roads therein as they may deem necessary.

SEC. 9. Any overseer of highways may procure a good and sufficient iron or steel shod scraper, and a suitable plough, or either of them, for the use of his road district, to be paid for with moneys arising from commutations and delinquencies within such district.

SEC. 10. If any overseer shall be employed more days in executing the several duties enjoined upon him by this chapter, than he is assessed to work on the highways, he shall be paid for the excess at the rate of seventy-five cents per day, and be allowed to retain the same out of any moneys that may come into his hands for delinquencies or commutations under this chapter; but he shall not be allowed to commute for the days he is assessed.

SEC. 11. If any person chosen to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the commissioners of highways shall, by warrant under their hands, appoint some other person in his stead; and the overseers so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties, as overseers chosen in township meetings.

SEC. 12. The commissioners of highways making such appointment, shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person appointed, which person shall give written notice of his acceptance to such clerk, within ten days after receiving notice of his appointment.

SEC. 13. Every overseer of highways who shall refuse or neglect to perform any of the duties required of him by law, or which may be lawfully enjoined on him by the commissioners of highways of his township, and for the omission of which a penalty is not hereinafter provided, shall, for any such neglect or refusal, forfeit the sum of ten dollars.

SEC. 14. It shall be the duty of the commissioners of highways of each township, whenever any person resident in their township shall make complaint that any overseer of highways in such township has refused or neglected to perform any of the duties required of him by law, or shall give or offer to such commissioners sufficient security to indemnify them against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer in the name of the people of this state, for the recovery of such penalty.

CHAPTER 23.

OF PERSONS LIABLE TO WORK ON HIGHWAYS, AND MAKING ASSESSMENTS THEREFOR.

**Persons liable to
be assessed.**

SECTION 1. Every person owning or occupying land in the township in which he resides, and every male inhabitant above the age of twenty-one, and under fifty years, except as hereinafter provided, residing in the township where the assessment is made, shall be assessed

to work on the highways in such township; and the lands of non-residents, situated in such township, shall be assessed for highway labor as hereinafter directed.

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SEC. 2. The commissioners of highways of the several townships, shall meet at the office of the supervisor, on the second Monday of May, in each year, for the purpose of assessing a highway tax, and they shall have free access to the assessment roll until they shall have completed their assessment.

When tax to be assessed.

1844, p. 60, § 2.

SEC. 3. Each of the overseers of highways, shall, within sixteen days after his election or appointment, deliver to the township clerk, a list subscribed by him, of the names of all the inhabitants in his road district who are liable to work on the highways.

List to be furnished by overseers.

SEC. 4. The commissioners of highways in each township, shall make out from the assessment roll, a separate list and statement of the valuation of all the taxable personal property, and a description of all lots or parcels of land within each road district in such township, inserting in a separate part of such list descriptions of lands owned by non-residents of the township, with the value of each lot or parcel set down opposite to such description, as the same shall appear on the assessment roll; and if such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part.

Statement and description of property.

1840, p. 81, § 3.

SEC. 5. In making the estimate and assessment of highway labor, the commissioners shall proceed as follows:

Assessment, how made.

1. Every male inhabitant in each road district, being above the age of twenty-one, and under the age of fifty, except paupers, persons of color not possessing taxable property, idiots and lunatics, shall be assessed one day:

2. The residue of the highway labor to be assessed, not exceeding one day's work upon one hundred dollars of the valuation, shall be apportioned upon the estate, real and personal, of every inhabitant in each of the road districts in such township, and upon each tract or parcel of land in the respective road districts, of which the owners are non-residents, as the same shall appear by the assessment roll:

3. The commissioners shall affix to the name of each person named in the lists furnished by the overseers, and not assessed upon the assessment roll, and also to each valuation of property within the several road districts, the number of days which such person or property shall be assessed for highway labor, adding one day to the assessment of each person liable to a poll tax, and assessed upon the township assessment roll.

SEC. 6. The clerk of the board of commissioners shall, under their direction, make duplicates of the several lists, which shall be subscribed by the commissioners, one of which lists for each road district, shall be filed by such clerk in his office, and the other shall be forthwith delivered to the overseer of highways of the district in which the highway labor therein specified is assessed.

Clerk to make duplicates.

SEC. 7. The names of persons left out of any such list, and who ought to have been included therein, and of new inhabitants who have not in the same year been assessed in some other place for highway labor, shall be, from time to time, added to the several lists, and rated by the overseers in proportion to their taxable real and personal property, as others are rated on such lists by the commissioners, to work on the highways, subject to an appeal to the commissioners.

Names of persons omitted.

**TITLE VI.
CHAPTER 24.**

Credit to persons
working private
roads.

SEC. 8. It shall be the duty of the commissioners of highways of each township, to credit such persons as live on private roads and work the same, so much upon their assessment on account of such work, as such commissioners may deem necessary to improve and keep such private roads in repair; or they may annex any such private road to some highway district.

Certain assess-
ments to be
made separate.

SEC. 9. Whenever the occupant of any land not owned by him, shall be assessed therefor by the commissioners, they shall distinguish in their assessment list, the amount charged upon such land, from the personal tax, if any, of such occupant; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed, during the same year, to work on the highways on account of such land.

When assess-
ment may be de-
ducted from rent
&c.

SEC. 10. Whenever any tenant of any land for a less term than twenty-five years, shall be assessed to work on the highways on account of such land pursuant to the last section, and shall actually perform such work, or commute therefor, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such assessment, or he may recover the same of his landlord in an action for money paid for his benefit, estimating the same at so much as is or shall be prescribed by law for commutation per day for highway labor, unless otherwise provided by agreement between such tenant and his landlord.

CHAPTER 24.

OF THE DUTIES OF OVERSEERS IN REGARD TO THE PERFORMANCE OF LABOR ON HIGHWAYS; AND OF THE PERFORMANCE OF SUCH LABOR OR THE COMMUTATION THEREFOR, AND APPLICATION OF MONEYS BY THE COMMISSIONERS.

Notice to persons
assessed.

SECTION 1. It shall be the duty of the overseers of highways, to give at least twenty-four hours' notice to all persons assessed to work on the highways in their respective districts, and residing in their townships, of the time and place when and where they are to appear for that purpose, and with what implements.

When agent of
non-resident to
be notified.

SEC. 2. It shall be the duty of the several overseers of highways, to notify the agent of every non-resident owner of lands within their respective districts, if they shall know that any such agent resides within the township, of the number of days assessed upon the lands of such non-resident, and of the time when, and place where the labor is to be performed; which notice shall be given at least five days previous to the time appointed.

Commutation
for work, &c.

SEC. 3. Every person liable to work on the highways, shall work the whole number of days for which he shall have been assessed; but every such person, other than an overseer, whether resident or non-resident, may elect to commute for the same or any part thereof, at the rate of sixty-three cents for each day, in which case such commutation money shall be paid to the overseer of highways of the district in which the labor is required to be performed, and shall be applied and expend-

ed by such overseer in the purchase of implements, or construction and repair of the roads and bridges in the same district.

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CHAPTER 24.**

SEC. 4. Every person intending to commute as aforesaid, shall, within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him, and the commutation shall not be considered as complete until such money be paid.

When commutation to be paid.

SEC. 5. Every overseer of highways shall have power to require a cart, wagon, plough or scraper, with a yoke of oxen or span of horses, and a man to manage them, to be furnished by any person having the same within his district, who shall have been assessed and shall be liable for three days or more; and the person furnishing a man and team, with a cart, wagon, plough or scraper, upon such requisition, shall be entitled to a credit of three days for each day's service therewith.

Overseer may require cart, &c.

SEC. 6. Every person assessed to work on the highways, and warned to work thereon, may appear and work in person, or by a substitute; and the person so appearing shall actually work eight hours in each day.

Work by substitute.

SEC. 7. If any person assessed, or his substitute shall, after appearing, remain idle, or not work faithfully, or hinder others from working, such offender shall, for each offence, pay the sum of one dollar.

Forfeiture for idleness, &c.

SEC. 8. Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect without good cause, to appear as above provided, shall for every day's refusal pay the sum of one dollar; and if he was lawfully required to furnish a team, carriage, man or implements, and shall refuse or neglect without good cause to comply, he shall pay as follows:

Liability for refusal to work, &c.

1. For wholly refusing to comply with such requisition, three dollars and fifty cents for each day:

2. For omitting to furnish a cart, wagon, plough or scraper, one dollar and twenty-five cents for each day:

3. For omitting to furnish a yoke of oxen or span of horses, one dollar and twenty-five cents for each day:

4. For omitting to furnish a man to manage the same, one dollar and twenty-five cents for each day.

SEC. 9. It shall be the duty of every overseer of highways, within six days after any person shall become liable for the payment of any sum of money under the provisions of either of the last three preceding sections, unless a satisfactory excuse be rendered to him by the person so liable, to make complaint in writing and on oath, to some justice of the peace of the township, stating the default, neglect, refusal, or other cause, by reason of which such person became so liable.

Overseer, when to make complaint against persons liable for neglect, &c.

SEC. 10. The justice to whom such complaint shall be made, shall forthwith issue a summons, directed to any constable of the county, requiring him to summon the person against whom the complaint shall have been made, to appear forthwith before such justice, at some place to be specified in the summons, to show cause why a judgment should not be rendered against him according to law for the cause mentioned in the complaint; which summons shall be served personally.

Proceeding on complaint.

SEC. 11. On the return of such summons, or within such reasonable time thereafter as the justice shall allow, if no sufficient cause shall be shown to the contrary, the justice shall render a judgment in favor of the people of this state against such person for the sum which such

Judgment and execution.

**TITLE VI.
CHAPTER 24.**

person shall have become liable to pay on account of the default, neglect, or other delinquency mentioned in the complaint, with the costs of prosecution; and shall forthwith issue an execution under his hand, directed to any constable of the county, commanding him to levy the amount of such judgment, including the costs of the proceedings, of the goods and chattles of such defendant.

Proceeding on execution.

SEC. 12. The constable to whom such execution shall be delivered, shall forthwith proceed to collect the moneys therein mentioned, by distress and sale of the goods and chattles of the defendant therein named, giving at least ten days' notice of the time and place of sale; and he shall pay such moneys, when collected, to the justice who issued the execution, who shall pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in his district.

Moneys collected to be set off against assessment.

SEC. 13. Every sum of money collected for a refusal or neglect to appear and work on the highways, shall be set off against the assessment upon which it was founded, estimating every one dollar and twenty-five cents collected, exclusive of the costs of the proceedings, as a satisfaction for one day's work.

Excuse, effect of.

SEC. 14. The acceptance by an overseer, of an excuse for a refusal or neglect, shall not in any case exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year.

List of non-resident lands, &c., to be delivered to supervisor.

SEC. 15. Every overseer of highways shall, on or before the first Monday of October in each year, make out and deliver to the supervisor of his township, a list of all the lands of non-residents and of persons unknown, which are taxed on his list, upon which the labor assessed has not been paid, and the amount of labor unpaid; and said overseer shall make and subscribe an affidavit thereon, before some person competent to administer oaths, or before the supervisor, that the labor assessed upon the lands so returned has not been performed, and remains unpaid.

1844, p. 69, § 4.

Supervisor to cause delinquent taxes to be collected, &c.

SEC. 16. The supervisor of each township shall cause the amount of such arrearages of labor, estimating the same at seventy-five cents for each day, to be levied on the lands so returned, and to be collected in the same manner that the contingent charges of the township are collected; and the same, when collected, shall be paid into the township treasury, to be applied by the commissioners of highways in the construction and improvement of roads and bridges, in the road district for the benefit of which the labor was originally assessed.

Account to be rendered by overseer.

SEC. 17. Every overseer of highways shall, on or before the second Saturday next preceding the time of holding the annual township meeting, render to the commissioners of highways an account in writing, verified by his oath, to be administered by the township clerk, or some other person competent to administer such oath, and containing:

1. The names of all persons assessed to work on the highways in his district:

2. The names of all those who have actually worked on the highways, with the number of days they have so worked:

3. The names of all those against whom judgments have been recovered by virtue of this chapter, and the sums so recovered:

4. The names of all those who have commuted, and the amounts

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**TITLE VI.
CHAPTER 35.**

Consent of owner, when necessary.

SEC. 3. No public or private road shall be laid out through any orchard or garden without the consent of the owner thereof, if such orchard have been set out four years or more, or if such garden have been cultivated as such four years or more; nor shall any such road be laid out through any buildings, or any fixtures or erections for the purposes of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment thereof, without the consent of the owner.

Application for laying out road, &c.

SEC. 4. Whenever any three or more persons in any township, liable to be assessed for highway labor, shall wish to have a highway in such township, laid out, altered or discontinued, they may, by writing under their hands, make application to the commissioners of highways of the township for that purpose, who shall proceed to lay out, alter or discontinue any such highway, whenever, in their judgment, the public good will thereby be promoted.

Notice of meeting of commissioners.

SEC. 5. The applicants shall cause at least ten days' notice in writing to be given to all persons owning or interested in any of the lands through which the highway may pass, of the time when the commissioners will meet to lay out, alter or discontinue any road; which notice shall be served personally; or by copy left with, or at the residence of, the owner or occupant; and in case the owner is not a resident of the township, and the lands are unoccupied, such notice shall be posted up at least ten days before the time of meeting, in three of the most public places in the township.

Commissioners may adjust damages.

SEC. 6. Upon the laying out or altering any such highway, if damages shall be claimed therefor by any person through whose lands the same shall be laid, the commissioners may, in their discretion, adjust and settle the same with any such claimant: Provided, the damages thus allowed by the commissioners shall not, in the aggregate, exceed twenty-five dollars upon any one road.

Agreement to be filed—its effect.

SEC. 7. If the commissioners shall agree with any claimant as to the amount of damages, such agreement shall be reduced to writing and signed by such person and the said commissioners, and filed in the township clerk's office, and shall forever preclude such person from any further claim for such damages; and such person shall be entitled to an order from the township board upon the treasurer of the township, for the amount of damages specified in such agreement.

When application may be made for appointment of appraisers.

SEC. 8. If any person interested in lands through which a highway shall be laid out or altered by the commissioners, shall not be satisfied with the sum offered, or if no sum be offered, he may, within sixty days after the highway shall be opened to be worked, and not after, apply to a justice of the peace of the same or an adjoining township, for the appointment of appraisers to appraise such damages, which application shall be in writing, describing the premises; and any number of persons claiming damages on account of such highway, may join in such application; but such application shall not delay the opening of the highway.

Appointment of appraisers.

SEC. 9. On the receipt of such application, the justice shall appoint a time and place for that purpose, and shall issue a citation or notice, stating the time and place of hearing, which shall be served on one or more of the commissioners, at least six days before such time; and if the parties shall not agree to any other mode of appointing such appraisers, they shall be appointed in the following manner: the justice may make a list of eighteen disinterested freeholders of the county;

each party may object to six on the list, and out of the number not objected to, the justice shall, by lot, select three for the appraisers.

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CHAPTER 25.

Warrant to appraisers.

SEC. 10. The justice shall then annex to the application a warrant under his hand, and issue the same to the appraisers so elected, directing them justly and impartially to appraise the damages sustained by the applicant in the premises described in the application, and to make return of their doings to such justice within thirty days after the date of such warrant.

Proceedings of appraisers, &c.

SEC. 11. The appraisers shall be sworn justly and impartially to make the appraisal, and shall give notice to one or more of the commissioners, at least four days before the time appointed for that purpose; and shall, at the time appointed, proceed to view the premises and make the appraisal, and shall make their return thereof to the justice, as directed in the warrant, with a statement of their time and expenses, which shall be certified by the justice and filed with the township clerk; and if the amount of the appraisal shall be more than was offered by the commissioners, the costs and expenses shall be paid by the township; if not more than was offered, the costs and expenses shall be paid by the applicant.

Costs and damages to be levied, &c.

SEC. 12. Such appraisers shall be entitled to receive one dollar per day and fifty cents for half a day each for their services, and the justice shall be entitled to one dollar for his fees; and the damages consequent upon laying out or altering any highway, as finally settled, and all the lawful charges against the township for services, fees and expenses in settling such damages, shall be levied and collected in the township within which such highway is situated, and shall be paid by the township treasurer, upon the order of the township board, as other township charges.

Proceedings in case of disagreement between commissioners of adjoining townships.

SEC. 13. Whenever the commissioners of highways in one township, shall disagree with the commissioners of any adjoining township, whether in the same or another county, in relation to the laying out of a new road, or the alteration of an old road, extending into both townships, the commissioners of both townships, or a majority of them, shall meet together, at the request of the commissioners of either township, and make their determination upon such subject of disagreement.

Highways on the lines of townships.

SEC. 14. Whenever it shall become necessary to have a highway upon the line between two townships, such highway shall be laid by two or more of the commissioners of highways of each of said townships, either upon such line, or as near thereto as the situation of the ground will admit; and they may vary the same either to the one side or the other of such line, as they shall deem necessary.

Apportionment of damages, &c.

SEC. 15. The commissioners of highways of such adjoining townships, upon laying out a highway upon the line thereof, shall determine what part of such highway shall be made and repaired by such (each) township, and what share of the damages shall be paid by each.

Proceedings of commissioners.

SEC. 16. The commissioners of highways of such adjoining townships shall proceed in all things, as is required of the commissioners of highways of one township, in laying out highways in such township; and their proceedings, or a duplicate thereof, shall be returned to the township clerk of each township, and their order, including the survey, shall be recorded in each township clerk's office; and each township shall have all the rights, and be subject to all the liabilities,

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CHAPTER 25.**

Highways laid
on the lines be-
tween townships

Width of roads.

Appeal from de-
termination of
commissioners,
&c.

Appeal from de-
termination of
commissioners
of adjoining
townships.

Appeal how
made.

Township boards
to give notice.

Service of notice.

Decision of ap-
peal.

In relation to the part of such highway to be made and repaired by such township, as if the same was located wholly in such township.

SEC. 17. All highways heretofore laid out upon the line between any two townships, shall be divided, allotted, recorded, and kept in repair, in the manner above directed.

SEC. 18. Public roads to be laid out by the commissioners of highways, shall not be less than four rods wide.

SEC. 19. Any person who shall conceive himself aggrieved by any determination of the commissioners of highways of any township, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any road, may, within twenty days after such determination, appeal to the township board of such township; but an appeal by one person, shall not conclude nor affect the rights of any other person who shall appeal within the time limited; and the said township board shall suspend all proceedings upon appeals received by them from any such determination, until the time limited for such appeals shall have expired, to the end that their decision, when made, may embrace the whole subject.

SEC. 20. In case of an appeal from the determination of commissioners of highways of adjoining townships in the same county, or in different counties, relating to a road upon the line of such township, such appeal may be made to the township board (*boards*) of the said adjoining township, (*townships*) who shall act jointly in deciding upon the determination of the said commissioners: provided, that any commissioner who may be a member of the township board, shall not act on such appeal.

SEC. 21. Every appeal from a determination of commissioners of highways shall be in writing, addressed to the township board or boards, as the case may be, and signed by the party appealing, and shall briefly state the ground upon which it is made, and whether it is brought to reverse entirely the determination of the commissioners, or only to reverse a part thereof; and in the latter case it shall specify what part.

SEC. 22. It shall be the duty of the township board or boards to whom the appeal is made, as soon as may be after the time limited for taking appeals shall have expired, to give notice to the appellant, and to one or more of the commissioners from whose determination the appeal was taken, of the time when they will proceed to view the premises, and to hear the appeal.

SEC. 23. Every such notice shall be served at least eight days before the time mentioned therein, by delivering a copy of the same to the appellant, and to one of such commissioners, or by leaving a copy thereof at the dwelling house of such appellant and commissioner.

SEC. 24. The said township board or boards shall proceed at the time specified in the notice, to view the premises, and to hear the proofs and allegations of the parties; and they may issue process to compel the attendance of witnesses, and may adjourn from time as may be necessary, and their decision shall be conclusive in the premises; and every such decision shall be reduced to writing, be signed by the township board or boards making the same, and filed by them in the office of the clerk of the proper township, who shall record the same, and give notice thereof to the commissioners of highways; but *that* nothing herein contained shall be construed to prevent a new application under the provisions of this chapter.

SEC. 25. Each member of said board or boards shall be entitled to receive one dollar for each day, and fifty cents for half a day employed in viewing the premises, and in the hearing and decision of such appeal, to be paid by the party appealing, when the determination of the commissioners shall be affirmed; but when it is reversed, to be a charge against the township.

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CHAPTER 25.

Fees of members of board, and by whom paid.

SEC. 26. When any appeal shall have been made from a determination of the commissioners, refusing to lay out, alter or discontinue a road, and the decision of the township board or boards shall reverse such determination, the commissioners of highways shall proceed to lay out, alter or discontinue such road, in the same manner, and the proceedings thereon shall be the same, as if they had originally determined to lay out, alter or discontinue such road.

When commissioners to proceed to lay out roads, &c.

SEC. 27. Whenever a public highway shall have been laid out and established, or altered, through any enclosed or improved lands, the commissioners of highways shall give the owner or occupant of the land through which such road shall have been laid out or altered, notice thereof, and require him to remove his fences within such time as they shall deem reasonable, not less than sixty days after giving such notice, and no person shall be required to remove his fences between the first day of April and the first day of November.

Notice to owner &c., of improved lands to remove fences.

SEC. 28. Every public highway already laid out, no part of which shall have been opened and worked within four years from the time of its being so laid out, and every such highway hereafter to be laid out, no part of which shall be opened and worked within the like period, shall cease to be a road for any purpose whatever.

When highway shall cease to be a road.

SEC. 29. All public highways now in use, heretofore laid out and allowed by any law of this state, or of the late territory of Michigan, of which a record shall have been made in the office of the clerk of the county or township; and all roads not recorded, which have been used as public highways twenty years or more, and all roads not recorded, which shall hereafter be used ten years or more, shall be deemed public highways, but may be altered or discontinued according to the provisions of this chapter.

What highways to be deemed public roads.

SEC. 30. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained; if not, it shall be equally divided between the owners of the lands on each side.

Lands to revert on discontinuance of road.

SEC. 31. If any discontinued highway shall be set to a tract of land through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner; and in estimating the damages which may be sustained by any person owning or interested in lands, by reason of laying out or altering any highway, the benefits which such person may receive thereby shall be taken into consideration.

When discontinued highway to be taken into account in estimating damages.

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CHAPTER 26.

CHAPTER 26.

OF THE OBSTRUCTION OF HIGHWAYS, ENCROACHMENTS THEREON, AND
PENALTIES.

Penalty for ob-
structing high-
ways, &c.

SECTION 1. Whoever shall wilfully obstruct any highway or navigable river, or fill up, or place any obstruction in any ditch, constructed for draining the water from any highway, shall forfeit for every such offence a sum not exceeding twenty-five dollars.

Encroachments.

SEC. 2. In every case where a highway shall have been laid out and opened, and the same has been or shall be encroached upon by fences, the commissioners of highways shall make an order under their hands, requiring the occupant of the land through or by which such highway runs, and of which such fences form a part of the inclosure, to remove such fences beyond the limits of such highway within sixty days, and they shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of the road, the extent of the encroachment, and the place or places in which the same shall be, with reasonable certainty.

Forfeiture for
not removing en-
croachments.

SEC. 3. If such encroachment shall not be removed within sixty days after service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time, during which such fence shall continue unremoved.

Proceedings in
case encroach-
ment be denied.

SEC. 4. If the occupant upon whom a copy of such order shall be served, shall deny such encroachment, the commissioners or some one of them shall apply to some justice of the peace of the county, for a precept, which shall be issued by such justice, directed to any constable of the county, commanding him to summon six disinterested freeholders thereof, to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable to whom such precept shall be directed, shall give at least three days' notice to one of the commissioners of highways of the township, and to the occupant of the land, of the time and place at which such freeholders are to meet.

1b.

SEC. 5. On the day specified in the precept, the jury so summoned shall be sworn by such justice, well and truly to inquire whether any such encroachment has been made as described in the order of the commissioners, and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case any person so summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by a talesman as in other cases.

1b.

SEC. 6. If the jury find that any such encroachment has been made by the occupant of the land, or any former occupant thereof, they shall make and subscribe a certificate in writing of the particulars of such encroachment, and by whom made, which shall be filed in the office of the township clerk; and the occupant of the land, whether such encroachment shall have been made by him, or by any former occupant, shall remove his fences within thirty days after the filing of such certificate, under the penalty of fifty cents for each day after the expiration of that time, during which such fences shall remain unremoved.

1b.

SEC. 7. If the jury find that any such encroachment has been made as aforesaid, the occupant shall pay the costs of such inquiry, and if the

same shall not be paid in ten days, the justice shall issue a warrant for the collection thereof, directed to any constable of the county, commanding him to levy such costs and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constables, jurors and witnesses, shall be entitled to the same compensation as for other similar services in proceedings before justices of the peace.

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SEC. 8. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damages which the then occupant shall have sustained by such proceeding; which damages, together with the costs of the proceedings, shall be paid by the complainant.

When damages
to be paid by
complainant.

SEC. 9. No person shall be required to move any fence under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order for the removal thereof.

When fences
may not be re-
moved.

SEC. 10. If any tree shall fall or be fallen by any person from any occupied land, into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the same in two days: and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter, until such tree shall be removed.

Penalty on occu-
pant for not re-
moving fallen
trees, &c.

SEC. 11. In case any person shall cut down or fall any tree on enclosed land not occupied by him, so that it shall fall into any highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all other damages which such occupant may sustain, to be recovered as damages in an action of trespass, or on the case.

Liability for fal-
ling trees into
highway.

SEC. 12. Whoever shall obstruct the navigation of any river or stream, which now is or may hereafter be declared a public highway, by falling any tree therein, or by putting into any river or stream so declared a public highway, any refuse lumber, slabs, or other waste materials, on conviction thereof shall forfeit the sum of five dollars for any such offence.

Penalty for ob-
structing rivers,
&c.

CHAPTER 27.

OF THE ERECTION, REPAIRING AND PRESERVATION OF BRIDGES.

SECTION 1. Whenever it shall appear to the board of supervisors of any county, that any one of the townships in such county would be unreasonably burthened, by erecting or repairing any necessary bridge or bridges in such township, such board of supervisors may cause such sum of money to be raised and levied upon the county, as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expenses as they may deem proper; and such moneys, when collected, shall be paid to the township treasurer of the township in which the same are to be expended, and be applied by the commissioners of highways of such township to the purpose for which the same was raised.

When moneys
may be raised
for building
bridges.

**TITLE VI.
CHAPTER 23.**

Limitation of
amount.

When notice
may be put up
at end of bridge.

Forfeiture.

Penalty for inju-
ring bridge.

SEC. 2. No board of supervisors shall, under the provisions of the preceding section, cause any sum exceeding one thousand dollars to be raised and levied in any county in any one year.

SEC. 3. The commissioners of highways of any township may put up and maintain at the expense of their township, in conspicuous places at each end of any bridge in such township maintained at the public charge, and the length of whose chord is not less than twenty-five feet, a notice with the following words in large characters: "One dollar fine for riding or driving on this bridge faster than a walk."

SEC. 4. Whoever shall ride or drive faster than a walk on any bridge, upon which such notice shall have been placed, and shall there be, shall forfeit for every such offence the sum of one dollar.

SEC. 5. Whoever shall injure any bridge maintained at the public charge, shall, for every such offence, forfeit treble damages.

CHAPTER 28.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

When trees, &c.
to be for use of
owner of land.

SECTION 1. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner of such land, or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purposes.

Trees may be set
out along high-
way, &c.

SEC. 2. Any person owning or occupying land adjoining any highway not less than three rods wide, may plant or set out trees on each side of said highway contiguous to his land; which trees shall be set in regular rows, at a distance of at least six feet from each other, and within ten feet of the margin of the highway; and if any person shall cut down, destroy or injure any tree that may have been, or shall be so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable in treble damages to the owner or occupant of such adjoining land, in an action of trespass, or on the case.

Person removing
mile-stone, &c.,
guilty of misde-
meanor.

SEC. 3. Whoever shall wilfully destroy, remove, injure or deface any milestone or mileboard, erected on any highway; or shall wilfully injure or deface any inscription or device upon any guide-post or guide-board on any highway, or remove, destroy or injure any such guide-post or guide-board, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months, in the discretion of the court.

Liability for in-
juring highway,
&c.

SEC. 4. Whoever shall injure any highway, by obstructing or diverting any creek, water course or sluice, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall be liable in treble damages, to be recovered in an action of trespass, or on the case, by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of roads in his district.

SEC. 5. The provisions of this chapter, and of the preceding chap-



ters, relating to highways and bridges, shall be construed to extend to all parts of the state, except where special provisions, inconsistent therewith, have been or shall be made by law in relation to particular townships, counties, cities or villages.

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CHAPTER 29.

Provisions of
this title to ex-
tend to all parts
of state, except
&c.

CHAPTER 29.

OF THE REGULATION OF FERRIES.

SECTION 1. The board of supervisors of each of the counties of this state, may grant licenses for keeping ferries in their respective counties, to as many suitable persons as they may think proper; which licenses shall continue in force for a time to be specified therein by said board, not exceeding three years.

License for keep-
ing ferries.

SEC. 2. The said board, when they shall grant any license to keep a ferry, shall order and direct the rates of ferriage which the person licensed may receive, and may, from time to time thereafter, during the continuance of such license, alter such rates; and they may also direct what and how many hours each day such person shall attend his ferry.

Rates of ferriage
how regulated.

SEC. 3. No such license shall be granted to any person other than the owner of the land through which the highway adjoining the ferry shall run, unless such owner shall consent thereto, or shall neglect to apply for such license, after notice as hereinafter provided.

When not to be
granted except
to owner of land

SEC. 4. Whenever application shall be made by any person other than such owner, the board shall not grant a license to such applicant without the consent in writing of such owner, unless proof shall be made that such applicant caused notice to be given in writing to such owner, at least eight days before such application made, of his intention to make the same.

ib.

SEC. 5. Every person applying for such license shall, before the same be granted, give bond to the people of this state, in such penal sum as the said board shall direct, not less than two hundred dollars, with so many, and such sufficient sureties as the said board shall direct and approve, upon condition that he will faithfully keep and attend such ferry, with such and so many safe and convenient boats, and so many men to work the same, together with sufficient implements therefor, during the several hours in each day, and at such several rates, as the said board shall from time to time order and direct; which bond shall be filed with the county clerk.

Bond to be given.

SEC. 6. Every such license shall be entered by the county clerk in a suitable book in his office; and a copy of such license, attested by such clerk, shall be delivered to the person licensed.

Entry of license
by clerk, &c.

SEC. 7. Whenever the waters over which any ferry may be used, shall divide two counties, a license obtained in either of the counties, shall be sufficient to authorize the person obtaining the same, to transport persons, goods, wares, merchandize and effects, to and from either side of said waters.

When waters di-
vide two coun-
ties.

SEC. 8. Every person who shall violate such bond shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to such fine as the court may adjudge, not exceeding twenty-five dollars for each offence, and unless such fine, and the costs of prosecu-

Persons violating
bond guilty of
misdemeanor, &c

**TITLE VI.
CHAPTER 29.**

Persons using
ferry without li-
cense, guilty of
misdemeanor.

When person
may be prosecu-
ted in either of
two counties.

Limitations of
provisions of this
chapter.

tion shall be paid within ten days after such fine shall have been imposed, the prosecuting attorney for the county shall prosecute such bond for the use of the state.

SEC. 9. If any person shall use any ferry for transporting across any river, stream or lake, persons, goods, chattles or effects, for profit or hire, unless authorized in the manner directed in this chapter, such person shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to such fine as the court may adjudge, not exceeding twenty dollars for each offence.

SEC. 10. When any offence mentioned in either of the two last preceding sections, shall be committed on waters dividing two counties, the person so offending may be prosecuted in either of such counties.

SEC. 11. Nothing contained in this chapter shall affect or impair any right or privilege belonging to any individual or corporation, by virtue of any law of this state.

TITLE VII.

TITLE VII.
CHAPTER 30.

OF THE REGULATION OF TRADE IN CERTAIN CASES.

Chapter 30. Of the Inspection of Provisions and other Merchandize,
and Regulations respecting the Sale thereof.

Chapter 31. Of Weights and Measures.

Chapter 32. Of Bills of Exchange and Promissory Notes.

Chapter 33. Of Limited Partnerships.

Chapter 34. Of Money of Account, and the Interest of Money, and
on Judgments, Verdicts, &c.

CHAPTER 30.

OF THE INSPECTION OF PROVISIONS AND OTHER MERCHANDIZE, AND REG-
ULATIONS RESPECTING THE SALE THEREOF.

SECTION 1. There may be elected in each of the organized counties in this state, as the public convenience and necessity may require, inspectors of the following articles, namely: beef and pork, butter and hog's lard, fish, flour and meal, leather, and pot and pearl ashes; and such inspectors shall hold their offices, respectively, for the term of four years, unless sooner removed by the board of supervisors for misconduct in office.

Inspectors may
be elected.

SEC. 2. Each inspector shall, before entering on the duties of his office, take and subscribe the oath of office prescribed by the twelfth article of the constitution of this state, and cause the same to be filed in the office of the clerk of the county for which he shall be appointed, (*elected*,) and shall also give bond, with sufficient sureties, as hereinafter provided.

Oath and bond.

SEC. 3. Each inspector shall appoint one or more deputy inspectors, removable at his pleasure, in each township within his county where he shall deem it necessary, for whose official conduct he shall be responsible; and they shall give bonds with sufficient sureties to him in a penal sum not exceeding five hundred dollars each, and shall take and subscribe the constitutional oath of office, and cause the same to be filed in the office of the clerk of the county within which they shall be appointed.

Deputies.

Beef and Pork.

SEC. 4. Each inspector of beef and pork shall, before entering upon the duties of his office, give bond with sufficient sureties to the treasurer of this state, in the penal sum of one thousand dollars; which bond shall be approved by the county clerk, and lodged with

Bond of inspec-
tors of beef and
pork.

TITLE VII.
CHAPTER 30.
Annual returns.

the treasurer of the county for which such inspector is appointed (*elected*).

SEC. 5. Each inspector of beef and pork shall, annually, in the month of December, make a return to the secretary of state, of the whole number of barrels and half barrels of beef and pork so inspected by him and his deputies during the year preceding the first day of December in the year when such return is made, designating therein the different sorts, and the places at which the same was inspected.

Quality of barrels and weight of contents.

SEC. 6. All barrels in which beef or pork shall be packed, shall be made of good seasoned white oak or white ash staves and heading, free from any defect, and each barrel shall contain two hundred pounds of beef or pork.

Barrels, how made.

SEC. 7. Such barrels shall measure seventeen and a half inches between the chimes, and be twenty-nine inches long, and be hooped with at least twelve good hickory, white oak, or other suitable hoops; and if the barrel be made of white ash staves, it shall be hooped with at least fourteen such hoops; the staves and heads shall be made of a proper thickness, and the hoops shall be well set and driven together.

Half barrels.

SEC. 8. The half barrels in which any beef or pork shall be packed, shall contain not less than fifteen, nor more than sixteen gallons, and made in proportion to, and of the like materials as a whole barrel, and shall contain one-half of the quantity of beef and pork of the whole barrel.

Quality &c., of beef.

SEC. 9. No beef shall be branded by an inspector as hereinafter mentioned, unless it be of fat cattle, not under three years old; and all such beef shall be cut into pieces as nearly square as may be, and of not more than twelve, nor less than four pounds in weight.

Denominations of beef.

SEC. 10. All beef shall be sorted and divided for packing or re-packing, in barrels or half barrels, into three sorts, to be denominated "mess," "prime," and "cargo," beef.

Mess beef.

SEC. 11. Mess beef shall consist of the choice pieces of such cattle as are large and well fattened, without hocks, shanks, clods or necks, and may or may not contain two choice rounds out of the same cattle, not exceeding ten pounds each; and each barrel or half barrel containing beef of this description, shall be branded on one of the heads with the words "mess beef."

Prime beef.

SEC. 12. Prime beef shall consist of choice pieces of good fat cattle, of which there shall not be in a barrel more than one-half of a neck, nor more than two shanks, with the hocks cut off of the hind legs at the smallest place above the joints; and each barrel and half barrel containing beef of this description, shall be branded on one of the heads with the words "prime beef."

Cargo beef.

SEC. 13. Cargo beef shall be of fat cattle, with a proportion of good pieces, and not more than one-half of a neck, and three shanks, with the hocks cut off in the same manner as in prime, in a barrel, and shall be otherwise merchantable; and each barrel and half barrel of beef of this description, shall be branded on one of the heads with the words "cargo beef."

How salted.

SEC. 14. Every barrel of beef shall be well salted with good clean salt, equal to seventy pounds of Turk's Island salt, exclusive of a strong new pickle; and to each barrel shall be added four ounces of saltpetre; and every half-barrel shall be salted in the same proportion, and two ounces of saltpetre shall be added thereto.

How branded.

SEC. 15. On one head of every barrel and half barrel of merchanta-

ble beef and pork inspected and packed, shall be distinctly branded the weight it contains, with the first letter of the christian name, and the surname at full length, of the inspector or deputy who shall have inspected the same, the word "MICHIGAN," and the name of the county, and the year in which the same was inspected and branded.

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CHAPTER 30.

SEC. 16. No beef or pork shall be branded by an inspector, except such as shall be sweet and wholesome, and except the same be packed in casks of the dimensions hereinafter prescribed.

When not to be branded.

SEC. 17. There shall be four qualities of pork; the first quality shall be denominated "mess pork," and shall consist of the sides of good fat hogs, exclusive of all other pieces; and each barrel or half barrel of pork of this description, shall be branded on one of its heads with the words "mess pork."

Denominations of pork.

Mess pork.

SEC. 18. The second quality of pork shall be denominated "prime pork," of which there shall not be in a barrel more than three shoulders, the legs being cut off at the knee joint, nor more than twenty-four pounds of heads, which shall have the ears and snouts cut off; such snouts to be cut off at the opening of the jaws, and the brains and all impure matter to be taken out of the heads; and the rest of the pork necessary to constitute a brand of prime pork, shall be made up of side pieces, neck and tail pieces, and on one head of every such barrel or half barrel shall be branded the words "prime pork."

Prime pork.

SEC. 19. The third quality of pork shall be denominated "one hog pork," of which there shall not be in a barrel more than two hams, two shoulders, one neck, one rump, and one head, with the ears and snout cut off, and the brains and all impure matter taken out; and the rest of the pork to make up the barrel, shall consist of good side pieces, and each barrel of pork of this description, shall be branded with the words "one hog pork," on one head thereof.

One hog pork.

SEC. 20. The fourth quality of pork shall be denominated "cargo pork," of which there shall not be in a barrel more than thirty pounds of head, nor more than four shoulders, and it shall otherwise be merchantable pork, and one head of every such barrel or half barrel of such pork shall be branded with the words "cargo pork."

Cargo pork.

SEC. 21. Every barrel of pork shall be well salted with good clean salt, equal to seventy pounds of good Turk's Island salt, exclusive of a strong new pickle, and every half barrel shall be salted in the same proportion.

How salted.

SEC. 22. The inspectors and their deputies shall be paid the following, and no other fees, for inspecting and branding all casks of beef and pork, and giving a certificate thereof, to wit: For every barrel, fifteen cents, and for every half barrel, ten cents; which charges shall be paid by the person employing the inspector, together with the sum of twenty-five cents for each barrel, and fifteen cents for each half barrel, for packing and coopering the same, if done by him.

Fees for inspecting.

SEC. 23. If any inspector or deputy inspector shall unreasonably neglect or refuse to inspect or brand, on application made to him for that purpose, or shall be guilty of any neglect or fraud in inspecting, packing or branding any casks of beef or pork, contrary to the provisions of this chapter, or shall mark with his brands any casks containing beef or pork, which has not been actually inspected, he shall forfeit the sum of ten dollars for each offence.

Penalty for neglect or fraud.

SEC. 24. If any person other than an inspector or deputy inspector, shall brand any cask of beef or pork as having been inspected, he shall

Unlawful branding, penalty for.

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forfeit a sum not exceeding twenty dollars for each cask so unlawfully branded.

Penalty for inter-
mixing.

SEC. 25. If any person shall, with intent to defraud, intermix, take out or change any beef or pork from any cask inspected or branded as aforesaid; or shall put into such cask any other beef or pork for sale or exportation, contrary to the provisions of this chapter, he shall forfeit for each offence a sum not exceeding twenty dollars.

Offering import-
ed beef or pork
not inspected.

SEC. 26. If any person shall sell, or offer for sale, any barrel or half barrel of beef or pork imported into this state, without first having the same inspected and branded agreeably to the provisions of this chapter, he shall, for each barrel or half barrel so sold or offered for sale, forfeit a sum not exceeding ten dollars.

Butter and Hog's Lard.

Inspectors of
butter, &c., to
give bond.

SEC. 27. Each inspector of butter and hog's lard shall, before entering upon the duties of his office, give bond with sufficient sureties, to the treasurer of this state, in the penal sum of five hundred dollars; which bond shall be approved by the county clerk and lodged with the treasurer of the county for which such inspector is appointed (*elected*).

Annual returns.

SEC. 28. Each of the inspectors of butter and lard shall, annually, in the month of December, make a return to the secretary of state, of the whole number of casks, the different qualities, and the weight of each quality of butter and lard inspected by him and his deputies during the year next preceding the first day of said December.

Mode of making
inspection.

SEC. 29. The inspectors or their deputies shall examine casks, kegs and firkins containing butter or hog's lard, on application made by any person, and shall, with a proper instrument, perforate the contents of such casks, kegs or firkins, from one head to the other, and thereby draw out so much as shall determine the quality of the whole; and they shall see that it has been preserved with a due proportion of good fine salt, that it is sweet and pure, and otherwise merchantable.

Keg or firkin,
how branded.

SEC. 30. Each cask, keg or firkin of butter or hog's lard, which appears to be good and merchantable, shall be branded, in plain and legible characters, with the word "butter," or "hog's lard," as the same may be, and "first," or "second," or "third," according to its quality; and all other butter or hog's lard, shall be branded with the word "refuse."

It.

SEC. 31. Each cask, keg or firkin of butter or hog's lard, shall also be branded with the weight of the contents thereof, and with the word "MICHIGAN," the name of the township where it shall be inspected, the initial letter of the inspector or deputy's christian name, and the whole of his surname, and the month and year in which the same may be inspected; and where the name of the month consists of more than one syllable, it may be abbreviated.

Casks, how
made.

SEC. 32. All casks, kegs or firkins, in which butter or hog's lard shall be packed for exportation, shall be made of sound and well seasoned white oak or white ash staves and heading, full bound with oak, ash or walnut hoops.

How prepared.

SEC. 33. Each cask, keg or firkin, before any butter or hog's lard shall be packed therein, shall be filled with a strong brine, which shall remain therein three days, and as soon as the brine is emptied from the cask, keg or firkin, it shall be weighed by the owner of such butter or hog's lard, who shall, with a marking iron, mark on one of the

heads thereof the full weight of the cask, keg or firkin, and shall brand thereon the initial letter of his christian name, and the whole of his surname.

SEC. 34. The inspector or any deputy, for his services in inspecting, branding, weighing and delivering to the owner an invoice or weigh-note under his hand, of the weight of each cask, keg, or firkin, shall receive five cents for each cask, keg, or firkin, to be paid by the person employing him. Fees for inspecting.

SEC. 35. If any inspector or deputy inspector, shall, on application made for the inspection of any butter or hog's lard, as aforesaid, unreasonably neglect, refuse or delay to proceed to such inspection and branding for the space of three hours after application made to him, he shall for each offence forfeit the sum of five dollars. Penalty for neglect or delay.

SEC. 36. If any person shall counterfeit any brand used by any inspector or deputy inspector, or if any person shall make use of any such counterfeit brand, or of the brand of any inspector or deputy, to impress or brand any cask, keg or firkin of butter or hog's lard, he shall forfeit for each offence the sum of ten dollars; and if any owner of butter or hog's lard shall falsely mark any cask, keg or firkin thereof, or cause the same to be falsely marked, he shall forfeit the sum of three dollars for each offence. Penalty for counterfeiting brand, &c.

SEC. 37. If any person shall, with intent to defraud, intermix, take out or change any butter or hog's lard, from any cask, keg or firkin inspected and branded as aforesaid, or shall put into such cask, keg or firkin, any other butter or lard, for sale or exportation, without first cutting out the said brands and marks, the person so offending shall, for each such cask, keg or firkin, forfeit the sum of ten dollars. Penalty for intermixing.

Fish.

SEC. 38. Each inspector of fish, before entering upon the duties of his office, shall give bond, with sufficient sureties, to the treasurer of this state, in the penal sum of one thousand dollars; which bond shall be approved by the county clerk, and lodged with the treasurer of the county for which such inspector is appointed, (*elected*). Inspectors of fish to give bond.

SEC. 39. Each inspector of fish shall, annually, in the month of December, make a return to the secretary of state, of the quantity of fish inspected by him and his deputies during the year next preceding the first day of said December; and in each return he shall specify the different kinds and qualities, and the quantity of each quality so inspected. Annual returns.

SEC. 40. The inspector and his deputies shall, on application made to them for that purpose, proceed to examine any pickled fish submitted for inspection, and shall see that the same have been well struck with salt or pickle in the first instance, and preserved sweet, free from rust, taint or damage; and such fish as shall be found in good order, and of a good quality, shall be packed, either in barrels containing two hundred pounds, or in half barrels containing one hundred pounds. Inspection.

SEC. 41. Such fish shall be packed with good clean salt suitable for the purpose, and after packing said fish with sufficient salt to preserve them, and heading said casks, they shall be filled up with a clean, strong pickle; and the fish denominated white fish, of good quality, properly cleaned, and in good order, may be packed as aforesaid, without having been previously salted or pickled. How packed.

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**Denominations
and how brand-
ed.**

SEC. 42. Each cask shall be filled with fish of one and the same kind; and the inspectors and their deputies shall brand, in plain legible letters, on the head of each cask of fish inspected by them respectively, "number one," or "number two," representing the quality of the fish packed or re-packed: he shall also brand on one head of each cask, the denomination of the fish, the initials of the christian name, and the whole of the surname of the inspector or deputy, the name of the county in which such fish are inspected, the word "MICHIGAN," and the month and year of the inspection.

**Penalty for
frauds.**

SEC. 43. If any person, with intent to defraud, shall intermix, take out, or change any inspected fish, which shall be packed and branded as aforesaid, or shall put any other fish in any cask so branded, for sale or exportation; or if any person shall counterfeit any brand-marks of any inspector or deputy, on any cask containing fish, he shall forfeit fifteen dollars for each offence.

**Casks, how
made.**

SEC. 44. All casks used for packing and re-packing pickled fish, shall be made of sound, well seasoned, white, red or black oak, white ash or white pine timber; the barrels and half barrels shall be well hooped, with at least ten good hoops each, and shall be made in a substantial, workmanlike manner.

**Fees of inspect-
ors of fish.**

SEC. 45. The fees for inspecting and branding shall be, for each barrel, ten cents, and for each half barrel, six cents; and for overhauling, inspecting, re-packing and branding, for each barrel, twenty cents, and for each half barrel, twelve cents, exclusive of cooperage; which fees shall be paid by the person employing the inspector.

**Penalty for sel-
ling or transport-
ing tainted fish,
&c.**

SEC. 46. If any person shall sell within this state, or shall export, or cause to be exported therefrom any tainted or otherwise damaged fish, unless with the intent that the same shall be used for some other purpose than as food, he shall forfeit the sum of ten dollars for every one hundred pounds of such fish, and in the same proportion for any other quantity thereof; and upon any trial in such case, the burden of proof shall be upon the defendant, to show for what purpose such fish were so exported or sold.

**Penalty on in-
spector for cer-
tain frauds.**

SEC. 47. If any inspector or deputy inspector of fish shall brand any cask of fish, the contents of which he has not duly inspected and ascertained to be good, or if he shall permit any other person to use his brand in violation or evasion of the provisions of this chapter, he shall forfeit for each offence the sum of twenty dollars, and shall also be removed from office.

Flour and Meal.

**Bond of inspect-
or of flour and
meal.**

SEC. 48. Each inspector of flour and meal, before entering upon the duties of his office, shall give bond with sufficient sureties for the faithful performance of the duties of his office, in the penal sum of one thousand dollars, which shall be approved by the county clerk, and lodged with the treasurer of the county for which such inspector is appointed (*elect*).

Annual returns.

SEC. 49. Each inspector of flour and meal shall, annually, in the month of December, make a return to the secretary of state, of the quantities and qualities of flour and meal inspected by him and his deputies during the year preceding the first day of said December.

How packed.

SEC. 50. All wheat flour, rye flour, and buckwheat meal, manufactured in this state for sale or exportation, shall be packed in good and strong casks, made of seasoned oak or other sufficient timber, and

hooped with at least ten good and substantial hoops, three of which shall be on each chime, and properly nailed.

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SEC. 51. The casks shall be of two sizes, one of which shall contain one hundred and ninety-six pounds of flour or meal, with staves twenty-seven inches in length, and each head sixteen and one-half inches in diameter; the other size shall contain ninety-eight pounds, with staves twenty-two inches long, and each head fourteen inches in diameter.

Sizes and capacity of casks.

SEC. 52. The casks shall be made as nearly straight as may be, and their tare shall be accurately marked on one head with a marking iron, and they shall also be branded with the weight of the flour or meal contained therein, and with the initials of the christian, and the whole of the surname of the manufacturers thereof, except when such flour or meal shall be manufactured by a company, when the cask may be branded with the name of such company.

Casks, how made and branded.

SEC. 53. Every such cask of wheat flour shall also be branded as follows, namely: If of a superior quality, "superfine," if of a second quality, "fine," if of a third quality, "fine middlings," if of a fourth quality, "middlings."

Brands of wheat flour.

SEC. 54. Each cask of rye flour of the first quality, shall be branded with the words "superfine rye flour," and each cask of the second quality, with the words "fine rye flour," and each cask of buckwheat meal shall be branded with the words "B. meal."

Of rye flour, &c.

SEC. 55. When the flour or meal has been packed and branded according to the preceding provisions, application may be made to an inspector or deputy inspector of flour and meal, and it shall be his duty to examine and determine the quality of the same.

Application for inspection, &c.

SEC. 56. It shall be the duty of the inspector or deputy,

Duties of inspector.

1. To ascertain by examination, the weight of all casks which he may suspect of being falsely tared:

2 To alter and correct the brands in all cases where he shall be of opinion that they do not designate the real quality of the flour or meal:

3. To weigh such casks as he shall suspect do not contain the full weight, and if they do not contain the full weight, to brand them with the word "light."

4. To brand all casks containing flour or meal so damaged as not to be fit for exportation, with the word "bad:" and,

5. On all casks made, branded and packed according to the provisions of this chapter, to brand in a legible manner, on one head thereof, the initials of his christian, and the whole of his surname, together with the name of the county where the inspection has been made.

SEC. 57. Every inspector or deputy inspector of flour and meal, shall be entitled to receive for inspecting, boring, branding and plugging each barrel and half barrel, three cents, and for weighing and ascertaining the light weight or under tare of each barrel and half barrel, three cents.

Fees of inspectors.

SEC. 58. Every person who shall alter or counterfeit any brand marks of the inspector or deputy, or of the manufacturer, made under the provisions of this chapter, shall forfeit the sum of ten dollars for every cask, the brand of which shall be so altered or counterfeited; and every person who shall put any flour or meal into an empty cask, branded by an inspector, and offer the same for sale in such cask, without first cutting out the brands, shall forfeit, for each offence, the sum of five dollars.

Penalty for counterfeiting brand marks, &c.

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Leather.

Bonds of inspectors of leather.

SEC. 59. Each inspector of leather shall, before entering upon the duties of his office, give bond to the treasurer of this state in the penal sum of two hundred and fifty dollars, with sufficient sureties; which bond shall be approved by the county clerk, and lodged with the treasurer of the county for which such inspector is appointed (*elected*).

Annual returns.

SEC. 60. Each inspector of leather shall, annually, in the month of December, make a return to the secretary of state, of the number and weight of all the sides of sole leather inspected by him and his deputies during the year ending on the first day of that month; and in such return he shall designate the quantity of each quality of leather so inspected.

Sole leather how inspected.

SEC. 61. Every inspector or deputy, when requested, shall inspect all sole leather offered for his inspection, and he shall furnish himself with proper scales, weights and seals for such purpose, and shall weigh each side of sole leather which he shall inspect, and impress thereon the initials of his christian and the whole of his surname, and the name of the county for which he is inspector or deputy, at full length, and also the weight thereof.

How branded.

SEC. 62. On all sole leather which such inspector or deputy shall find, upon inspection, to be manufactured of good hides, in the best manner, he shall impress the word "best"; and on all manufactured of good hides, in a merchantable manner, the word "good"; and on all manufactured of damaged hides, in a merchantable manner, the word "damaged"; and on all sole leather not belonging to any of the qualities aforesaid, the word "bad."

Penalty for fraud.

SEC. 63. If any person shall, with intent to defraud, alter or deface such mark on any side of sole leather so inspected, or shall counterfeit such marks, he shall, for each offence, forfeit the sum of twenty-five dollars.

Fees for inspecting.

SEC. 64. The inspector or his deputy shall be paid for inspecting, weighing and sealing each side of sole leather, the sum of four cents, to be paid by the person employing him.

Inspector liable in case of variation in weight.

SEC. 65. If any side of sole leather shall, when dried in a merchantable manner, so vary as to weigh five per cent more or less than the weight marked thereon by the inspector who inspected the same, he shall be liable to pay the whole variation, at a fair valuation, to be recovered in an action on the case by the party injured thereby.

Penalty for neglect, &c.

SEC. 66. If any inspector or deputy inspector of leather, on application made to him for the inspection of any sole leather, shall, for the space of three hours, unreasonably refuse or neglect to make such inspection, he shall, for each offence, forfeit the sum of five dollars.

Pot and Pearl Ashes.

Bond of inspector of pot and pearl ashes.

SEC. 67. Each inspector of pot and pearl ashes shall, before entering upon the duties of his office, give bond to the treasurer of this state with sufficient sureties, in the penal sum of five hundred dollars; which bond shall be approved by the county clerk, and lodged with the treasurer of the county for which such inspector is appointed, (*elected*).

Annual returns.

SEC. 68. Each inspector of pot and pearl ashes shall, annually, in the month of December, make a return to the secretary of state, of the number of casks of pot and pearl ashes inspected by him and his deputies during the year ending on the first day of that month, spe-

cifying the number of each kind under each brand, and the weight of each quality.

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SEC. 69. Every manufacturer of pot and pearl ashes shall brand each cask containing the same, with the initial letters of his christian name, and the whole of his surname, or with the name of the company, if the same shall have been manufactured by a company, and with the name of the township, village or city where the same shall have been manufactured before the same shall be removed from the manufactory.

How branded,
&c., by manufac-
turer.

SEC. 70. The inspectors and their deputies shall, within their respective counties, examine all pot and pearl ashes submitted to them for inspection; and they shall remove the same from the casks, and carefully inspect, and determine the quality of the same, and sort the same into three different sorts, if necessary.

Examination by
inspector.

SEC. 71. They shall put each sort into casks by itself, which they shall distinguish by the words, "first sort," "second sort," or "third sort," with the words "pot ashes," or "pearl ashes," as the same may be, branded thereon in plain legible letters, together with the weight thereof, the initial letters of the inspector's or deputy's christian name, and the whole of his surname, the place where such pot or pearl ashes shall be inspected, and the word "MICHIGAN," at full length, on one head of each cask.

Sorting and
branding by in-
spector.

SEC. 72. The inspector or his deputy shall receive for inspecting, weighing and branding, and delivering to the owner an invoice or weigh-note under his hand, of the weight of each cask of pot and pearl ashes, the sum of six cents for every hundred pounds so inspected; and if any cask shall be coopered and nailed by him, he shall receive therefor the further sum of twelve cents.

Fees for inspec-
tion, &c.

SEC. 73. If any inspector or deputy inspector shall, after application made to him for the inspection of any pot or pearl ashes, unreasonably refuse or neglect to make such inspection for the space of three hours after such application, the inspector or deputy so refusing or neglecting, shall, for each offence, forfeit the sum of five dollars.

Penalty on in-
spector for neg-
lect, &c.

SEC. 74. Every cask in which pot or pearl ashes shall be packed for exportation, shall be made of sound and well seasoned oak or white ash staves and heading, full bound, not less than twenty-nine inches in length, and nineteen inches in diameter in the head, and of such weight in proportion to its contents, as will amount, as near as may be, to fourteen per cent. tare thereon.

Casks how made.

SEC. 75. The inspector or deputy, after removing the pot or pearl ashes from the cask for inspection, shall weigh each cask, and mark the weight with a marking iron on the head thereof.

Casks to be
weighed and
marked.

SEC. 76. If any person shall, with intent to defraud, brand any pot or pearl ashes manufactured by himself, with the name of any other person, or shall brand any such cask manufactured by another person with his own name, or shall counterfeit any brand belonging to, or proper to be used by the inspector or any deputy to impress or brand any cask of pot or pearl ashes, he shall forfeit and pay for each offence, the sum of fifty dollars.

Penalty for
frauds.

SEC. 77. If any person shall, with intent to defraud, take out of any cask of pot or pearl ashes, inspected and branded as required by this chapter, any portion of the contents thereof, and put into the same any other pot or pearl ashes, or shall put into any empty cask which shall have been branded by the inspector as aforesaid, any pot or pearl ashes, for sale or exportation, without first cutting out the said

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brand marks, the person so offending shall, for each such cask, forfeit the sum of ten dollars.

Beer, Ale and Cider.

**Capacity of casks
&c.**

SEC. 78. No person shall sell or expose for sale any ale or beer, in barrels, half barrels, casks or kegs, of a less capacity, respectively, than barrels of thirty-two gallons each, half barrels of sixteen gallons each, and casks or kegs of ten gallons each, unless such other barrels, half barrels, casks or kegs, shall be conspicuously and permanently marked, on both heads, with the true measure thereof in gallons.

Forfeiture.

SEC. 79. Any person offending against the provisions of the last preceding section, shall forfeit the value of the ale or beer so exposed for sale or sold, and the barrels, half barrels, casks or kegs containing the same.

**Contracts, how
construed.**

SEC. 80. In all contracts for the sale of any ale, beer or cider, by the barrel or half barrel, the barrel shall be deemed to contain thirty-two gallons, and the half barrel sixteen gallons, unless the parties otherwise agree.

Staves and Heading.

**Cullers of staves
and heading their
election,
oath of office, &c.**

SEC. 81. In every county from which staves are usually exported, there may be elected two or more suitable persons, to be cullers of staves and heading, and who shall, before entering upon the duties of their offices, take and subscribe the constitutional oath of office, and cause the same to be filed in the office of the clerk of the county within which the duties of their offices are to be performed, and shall hold their offices for the term of five years from the time of their respective appointments (*elections*,) unless sooner removed from office by the governor.

Compensation.

SEC. 82. They shall be allowed for their time and services in culling and inspecting staves, as follows, namely: for every thousand long butt staves, one dollar and twenty-five cents; for every thousand short butt staves, one dollar; for every thousand pipe staves, fifty cents; for every thousand hogshead staves and heading, thirty-seven and a half cents; and for every thousand barrel staves and heading, twenty-five cents, to be paid by the owner thereof.

**Inspecting and
culling.**

SEC. 83. All staves or heading intended for sale or exportation may be inspected and culled, by a culler of staves and heading, at or near the place of sale or exportation; and none shall be culled as merchantable, unless they shall be of the description required in the following sections.

Butt staves.

SEC. 84. All long butt staves shall be of good white oak timber, five feet six inches long, and all short butt staves shall be of good white oak timber, four feet six inches long, and both at least five inches broad when dressed, clear of sap, two inches thick on the thinnest edge, and not more than two and a half inches thick in any place, and they shall be regularly split with the grain of the wood, and free from twist, and otherwise good and sufficient.

Pipe staves.

SEC. 85. All pipe staves shall be made of good white oak timber, four feet six inches long, and shall work three inches broad when dressed clear of sap, and shall be three quarters of an inch thick on the thinnest edge, regularly split with the grain of the wood, and shall not have more than six worm holes, and be otherwise good and sufficient.

SEC. 86. All hogshead staves shall be made of good white oak timber, three feet six inches long, and shall work three inches broad when dressed, clear of sap, and shall be three quarters of an inch thick on the thinnest edge, regularly split with the grain of the wood, and shall not have more than four worm holes, and shall be otherwise good and sufficient.

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Hogshead staves.

SEC. 87. All barrel staves shall be made of good white oak or white ash timber, two feet six inches long, and shall work three and a half inches broad when dressed, clear of sap, and shall be three-quarters of an inch thick on the thinnest edge, regularly split with the grain of the wood, and shall not have more than three worm holes, and be otherwise good and sufficient.

Barrel staves.

SEC. 88. All hogshead heading shall be made of good white oak timber, two feet eight inches long, and not less than five inches broad, clear of sap, two-thirds of which shall be suitable for middle pieces, and shall not be less than three-quarters of an inch thick on the thinnest edge, regularly split with the grain of the wood, and be otherwise good and sufficient.

Hogshead heading.

SEC. 89. If any culler shall connive at, or be guilty of, any fraud in the culling of staves or heading, he shall forfeit the sum of fifty dollars for each offence; and in case any culler of staves and heading shall unreasonably neglect or refuse to attend to the services required of him, when he shall be thereunto requested, he shall forfeit the sum of fifty dollars for every such neglect or refusal.

Penalty on culler for fraud and neglect.

SEC. 90. Nothing in this chapter contained shall be so construed as to render it obligatory upon any person to have any of the articles therein mentioned, inspected; but all contracts for the sale or manufacture of any such articles, shall be deemed to be made with reference to the provisions of this chapter regulating the quality, quantity and other description thereof respectively, unless the parties shall otherwise expressly agree.

Construction of this chapter.

CHAPTER 31.

OF WEIGHTS AND MEASURES.

SECTION 1. The weights and measures, together with the scales and beams, and those made in conformity therewith, which are now, or may hereafter be deposited in the treasury of this state, shall be preserved by the treasurer, and be the public standards.

Public standards of weights and measures.

SEC. 2. The treasurer of the state shall be the state sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the letter "M." upon the weights and measures, and scales and beams, to be sealed by him, with which he shall seal all such authorized public standards of weights and measures, and all the weights and measures, and scales and beams to be provided by the several counties, when examined by said treasurer, and found to be in conformity with the standard weights and measures and scales and beams aforesaid.

State sealer, his duties.

SEC. 3. The board of supervisors of each county for which the same have not already been obtained, shall procure, for the use and at the

Supervisors to procure standard from state sealer, &c.

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expense of their county, a complete set of weights and measures, and scales and beams, in exact conformity with those remaining in the state treasury; except that the same may be made of such suitable materials as the supervisor (*supervisors*) may direct, which shall be tried and proved by the said treasurer, and be by him sealed and certified.

County standard to be deposited with clerk; his duties.

SEC. 4. When so sealed and certified, such weights and measures, scales and beams, shall be deposited with the county clerk, who shall be the sealer of weights and measures for the county, and the same shall be kept by him as the standard of weights and measures for the county; and the said clerk shall also provide and keep a seal similar to the seal required to be kept by the state treasurer, with which he shall seal the weights and measures, and scales and beams, to be provided by the several townships.

County standard to be tried once in five years.

SEC. 5. Once in every five years from the first day of January, eighteen hundred and forty-five, each county clerk, for the time being, shall cause the said standards in his keeping to be tried, proved and sealed by the state standards, under the direction of the state treasurer.

When county standard to be procured by treasurer.

SEC. 6. If the board of supervisors of any county which has not heretofore provided such standards, shall neglect for six months to provide the same, and cause them to be tried and proved, and sealed as aforesaid, and delivered to the clerk of the county, it shall be the duty of the clerk to notify the county treasurer of such neglect, and such county treasurer shall immediately provide such standards, and cause the same to be tried, proved, sealed and deposited as aforesaid, at the expense of his county.

Standard for each township, how procured, &c.

SEC. 7. The township board of each township shall procure to be made and provided, when it shall not heretofore have been done, for the use and at the expense of the township, a complete set of weights and measures, and scales and beams, in conformity with the standards kept by the clerk of the county, which shall be tried, proved and sealed, and certified by the county clerk, by the standards remaining in his office; and such weights and measures, scales and beams, so tried, sealed and certified, shall be delivered to and kept by the clerk of the township, as standards for the township; such township standards to be made of such suitable materials as the township board shall direct; and the said board shall also provide a seal similar to the state seal, to be kept by the township clerk.

Township sealer. his duty.

SEC. 8. The township clerk of each township shall be the sealer of weights and measures therein, and shall have the care and custody of the standard weights and measures of his township, and shall seal weights and measures, scales and beams, used within his township, after having tried and proved them by the township standards.

1b.

SEC. 9. The clerk of each township shall, once in each year, sometime in the month of April, put up a written notice in three of the most public places in the township, stating therein the time and place, when and where he will attend such of the inhabitants as live within the limits described in the several notices aforesaid, and seal all such of their great and small scales, beams, weights and measures, as are found to be accurate, and as they shall bring for that purpose.

Compensation of township clerk.

SEC. 10. The township clerk shall be entitled to demand and receive from the person for whom the service is rendered, for trying, proving, and sealing as aforesaid, three cents for each scale, beam,

weight, or measure found not to be conformable thereto, and two cents for each [scale,] beam, weight or measure found to be conformable thereto.

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SEC. 11. The township clerk shall go, once in every year, to the houses, stores and shops of such merchants, traders, retailers of spirituous liquors, and of such other of the inhabitants of the township, using scales, beams, weights and measures, for the purpose of buying and selling, as shall neglect to bring or send in their scales, beams, weights and measures, and he shall there try, prove and seal the same.

When clerk to go to stores, &c., and try weights and measures.

SEC. 12. For the services required in the last preceding section, the township clerk shall be entitled to demand and receive of such merchants or other persons, double the fees hereinbefore provided for the like services, together with four cents for every mile he shall necessarily travel for that purpose, going out and returning home.

Double fees, when to be paid.

SEC. 13. The county clerk shall be entitled to receive from each township clerk, a fee of three cents for the first sealing of every weight, measure, scale or beam, and two cents for every subsequent sealing of the same.

Fees for county clerk, for sealing, &c.

SEC. 14. If the township board of any township, after notice to them that the standard of weights and measures for the county have been deposited with the county clerk, shall neglect for the space of six months, to provide standard weights and measures for their township as above directed, it shall be the duty of the township clerk forthwith thereafter to procure the same at the expense of the township.

When township clerk to procure standard.

SEC. 15. If any sealer of weights and measures shall neglect to perform his duty, as prescribed in this chapter, he shall forfeit for each neglect, the sum of five dollars.

Penalty on sealer for neglect, &c.

SEC. 16. The vibrating steel-yards, which have heretofore been allowed and used in this state, may continue to be used; but each beam, and the poises thereof, shall be annually tried, proved and sealed, by a scale (*sealer*) of weights and measures, like other beams and weights.

Vibrating steel yards

SEC. 17. When any commodity shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

Construction of certain contracts.

SEC. 18. Whenever wheat, rye, Indian corn, oats, barley, clover seed, buckwheat, dried apples or dried peaches, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows: Sixty pounds for a bushel of wheat or clover seed; fifty-six pounds for a bushel of rye or Indian corn; thirty-two pounds for a bushel of oats; forty-eight pounds for a bushel of barley; and forty-two pounds for a bushel of buckwheat; and twenty-eight pounds for a bushel of dried apples or dried peaches.

Weight of grains, &c. to the bushel.

1839, p. 218, § 9.

SEC. 19. The half bushel, and the parts thereof, shall be the standard measure for charcoal, fruits and other commodities, customarily sold by heaped measure; and in measuring such commodities, the half bushel or other smaller measure, shall be heaped as high as may be, without special effort or design.

Measure for charcoal, &c.

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CHAPTER 32.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

- What notes negotiable.** SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed; and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.
- Note signed by agent.** SEC. 2. Every note signed by the agent of any person under a general or special authority, shall bind such person, and have the same effect, and be negotiable, as provided in the preceding section.
- Actions by payees, &c.** SEC. 3. The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, in like manner as in cases of inland bills of exchange, and not otherwise.
- Effect, when payable to order of maker, &c.** SEC. 4. Such notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.
- When grace allowed.** SEC. 5. On all bills of exchange payable at sight, or at a future day certain within this state, and on all negotiable promissory notes, orders and drafts payable at a future day certain, within this state, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants, on foreign bills of exchange, payable at the expiration of a certain period after date or sight.
- Not if payable on demand.** SEC. 6. The provisions of the last preceding section shall not extend to any bill of exchange, note or draft payable on demand.
- Acceptance to be in writing.** SEC. 7. No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.
- Rates of exchange and damages, when payable without the United States.** SEC. 8. Whenever any bill of exchange, drawn or indorsed within this state, and payable without the limits of the United States, shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of five per cent. upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest, shall be in full of all damages, charges and expenses.
- When payable in another state of the U. States.** SEC. 9. The rates of damages to be allowed upon bills of exchange duly protested for non-acceptance or non-payment, if drawn or indorsed within this state, payable at any place without this state, but within the United States, shall be as follows, in addition to the contents of such bill with interest and costs, that is to say: upon all such bills payable within the territory of Wisconsin, or either of the states of Illinois, Indiana, Pennsylvania, Ohio or New York, three per cent. on the contents of the bill; if payable within either of the states of Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachu-

sets, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, or the District of Columbia, five per cent., and if payable elsewhere, within any other of the United States or territories thereof, ten per cent.

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CHAPTER 33.

OF LIMITED PARTNERSHIPS.

SECTION 1. Limited partnerships for the transaction of any mercantile, mechanical or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter provided; but nothing in this chapter contained shall be construed to authorize any such partnership for the purposes of banking or insurances.

For what purposes limited partnerships may be formed.

SEC. 2. Limited partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute a specific amount of capital, in cash or other property at cash value, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the amount of the fund so contributed by them respectively to the capital, except as hereinafter provided.

Liabilities of general and special partners.

SEC. 3. The general partners only, shall be authorized to transact business, to sign for the partnership, and to bind the same.

By whom business to be transacted.

SEC. 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain,

Certificate, its contents.

1. The name or firm under which the partnership business is to be conducted :

2. The general nature of the business to be transacted :

3. The names of all the general and special partners interested therein, distinguishing which are general partners, and which are special partners, and their respective places of residence :

4. The amount of capital stock which each special partner shall have contributed to the common stock :

5. The period at which the partnership is to commence, and the period when it will terminate.

SEC. 5. Such certificate shall be acknowledged by the several persons signing the same, before some officer authorized by law to take the acknowledgment of deeds, and such acknowledgment shall be made and certified in the manner provided by law for the acknowledgment of deeds for the conveyance of land.

How certificate to be acknowledged.

SEC. 6. The certificate so acknowledged and certified shall be filed in the office of the county clerk of the county in which the principal place of business of the partnership shall be situated, and shall be recorded at length by the clerk in a book to be kept by him; and such book shall be subject, at all reasonable hours, to the inspection of all persons.

Certificate to be filed and recorded.

SEC. 7. If the partnership shall have places of business situated in different counties, a transcript of such certificate, and of the acknow-

When certificate to be filed and recorded in different counties.

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ledgment thereof, duly certified by the clerk in whose office it shall have been filed, under his official seal, shall be filed and recorded in like manner, in the office of the clerk of every such county, and the books containing such records shall be subject to inspection, in the manner above directed.

**Affidavit to be
filed with certifi-
cate.**

SEC. 8. At the time of filing the original certificate and the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the amount in money, or other property at cash value, specified in the certificate to have been contributed by each of the special partners to the common stock, has been actually, and in good faith contributed and applied to the same.

**Consequences of
false certificate,
&c.**

SEC. 9. No such partnership shall be deemed to have been formed, until such certificate, acknowledgment and affidavit, shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

**Terms of part-
nership to be
published.**

SEC. 10. The partners shall publish the terms of the partnership, when recorded, for at least six weeks immediately after the recording thereof, in two newspapers to be designated by the clerk of the county in which such record shall be made, and to be published in a senatorial district in which their business shall be carried on; and if such publication be not made, the partnership shall be deemed general.

**Affidavit of
publication may
be filed, &c.**

SEC. 11. Affidavits of the publication of such notices, by the printers of the newspapers in which the same have been published, or some one in their employ knowing of such publication, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

**Renewal, &c., of
partnership.**

SEC. 12. Upon the renewal or continuance of a limited partnership, beyond the time originally agreed upon for its duration, a certificate shall be made, acknowledged, recorded and published, in the like manner as is provided in this chapter for the formation of limited partnerships; and the affidavit of one or more of the general partners as above provided, shall also be filed with the proper county clerk as aforesaid; and every such partnership, so continued, which shall not be renewed or continued in conformity with the provisions of this section, shall be deemed a general partnership.

**Alteration to be
deemed a disso-
lution, &c.**

SEC. 13. Every alteration which shall be made in the names of the partners, the nature of the business, in the capital, or in the shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of such limited partnership, and every such partnership which shall in any way be carried on after such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the last preceding section.

**Names compos-
ing firm.**

SEC. 14. The business of the partnership shall be carried on under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in said firm, with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner.

SEC. 15. During the continuance of the partnership under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce said capital stock below the sum stated in the certificate above mentioned; and if, at any time during the continuance, or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them received, withdrawn or divided, with interest thereon from the time when they were so withdrawn or divided respectively.

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Capital stock not
to be withdrawn,
&c.

SEC. 16. No general assignment by such partnership, of its property or effects, in case of insolvency, or where their goods and estates are insufficient for the payment of all their debts, shall be valid, unless it shall provide for the distribution of all the partnership property and effects among all the creditors, in proportion to the amount of their several claims; excepting claims of the United States, arising from bonds on duties which are first to be paid or secured.

When assign-
ment invalid.

SEC. 17. In case of an assignment, as provided for in the last preceding section, the assent of the creditors shall be presumed, unless they shall, within sixty days after notice thereof, dissent, either expressly, or by some act clearly implying such dissent; and no such assignment shall be valid, unless notice thereof shall be published in some newspaper printed in the county where the place of business of the parties making it is situated, or if no newspaper be printed in such county, then in some newspaper printed in an adjoining county, or at the seat of government, within fourteen days after making such assignment.

Provisions rela-
tive to assign-
ment, &c.

SEC. 18. All suits respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this chapter that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners, deemed general partners, may join or be joined in such suits; and excepting also those cases where special partners shall be held severally responsible on account of any sums by them received, or withdrawn from the common stock, as above provided.

Suits, how pros-
ecuted.

SEC. 19. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the registry in which such certificate, or the certificate of renewal or continuance of the partnership, was recorded, and in every other registry where a copy of such certificate was recorded; and unless such notice shall also be published six weeks successively in some newspaper printed in the county where the certificate of the formation of such partnership was recorded; or if no newspaper shall, at the time of such dissolution, be printed in such county, then in some newspaper printed at the seat of government.

Dissolution of
limited partner-
ships.

SEC. 20. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

Rights and liabil-
ities of partners.

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CHAPTER 34.

OF MONEY OF ACCOUNT, AND OF THE INTEREST OF MONEY, AND ON
JUDGMENTS, VERDICTS, &c.Money of ac-
count.

SECTION 1. The money of account of this state, shall be the dollar, cent, and mill : and all accounts in the public offices, and all other public accounts, and all proceedings in courts, shall be kept and had in conformity with this regulation.

Note, &c., ex-
pressed in other
money of ac-
count to be re-
duced to dollars,
&c.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry, originally made, or any note, bond, or other instrument expressed in any other money of account : but the same shall be reduced to dollars and parts of a dollar, as herein before directed, in any suit thereupon.

Interest of Money.

Rate of interest.

SEC. 2. The interest of money shall be at the rate of seven dollars upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or a shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding ten per cent per annum.

Usury.

SEC. 4. No bond, bill, note, contract or assurance, made or given for or upon a consideration or contract, whereby or whereon a greater rate of interest has been, directly or indirectly, reserved, taken or received, than is allowed by law, shall be thereby rendered void ; but in any action brought by any person on such usurious contract or assurance, except as is provided in the following section, if it shall appear that a greater rate of interest has been, directly or indirectly reserved, taken or received, than is allowed by law, the plaintiff shall have judgment for the principal and legal interest only, exclusive of the usury.

1843, p. 54.

When usury not
to effect negotia-
ble notes, &c.

SEC. 5. In any action brought on any bill of exchange or promissory note payable in money, and to order or bearer, originally given or made for or upon any usurious consideration or contract, if it shall appear that the plaintiff became, in good faith, the indorsee or holder of such bill of exchange or promissory note, for a valuable consideration, before the same became due, then and in such case, unless it shall further appear that the plaintiff, at the time of becoming such indorsee or holder, had actual notice that such bill or note was given for or upon a usurious consideration or contract, he shall be entitled to recover thereon, in the same manner, and to the same extent as if such usury had not been alleged and proved.

Interest on Judgments, Verdicts, &c.

Interest on judg-
ments and de-
crees.

SEC. 6. Interest may be allowed and received upon all judgments at law, for the recovery of any sums of money, and upon all decrees in chancery for the payment of any sums of money, whatever may be the form or cause of action or suit in which such judgment or decree shall be rendered or made ; and such interest may be collected on execution, at the rate of seven per centum per annum.

Interest on ver-
dicts, &c.

SEC. 7. In all actions founded on contracts express or implied, whenever in the execution thereof any amount in money shall be liquidated or ascertained in favor of either party, by verdict, report of

referees, award of arbitrators, or by assessment made by the clerk of the court, or by any other mode of assessment according to law, it shall be lawful, unless such verdict, report, award, or assessment shall be set aside, to allow and receive interest upon such amount so ascertained or liquidated, until payment thereof, or until judgment shall be thereupon rendered; and in making up and recording such judgment, the interest on such amount shall be added thereto, and included in the judgment.

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TITLE VIII.

OF THE PUBLIC HEALTH.

Chapter 35. Of the Preservation of the Public Health—Quarantine, Nuisances, and Offensive Trades.

Chapter 36. Of Medical Societies, and Regulations concerning the Practice of Physic and Surgery.

CHAPTER 35.

OF THE PRESERVATION OF THE PUBLIC HEALTH—QUARANTINE, NUISANCES, AND OFFENSIVE TRADES.

Board of health.

SECTION 1. The supervisor and justices of the peace of every township respecting which no other provision is or shall be made by law, shall be a board of health for their respective townships, and the township clerk shall be the clerk of such board, and shall keep a record of their proceedings in a book to be provided for that purpose at the expense of the township.

Appointment of health officer, his compensation, &c.

SEC. 2. Every board of health may appoint a physician to the board, who shall be the health officer of his township, and shall hold his office during their pleasure, and they shall establish his salary, or other compensation, and shall regulate all fees and charges of every person employed by them in the execution of the health laws, and of their own regulations.

Regulations relating to causes of sickness, &c.

SEC. 3. The board of health shall make such regulations respecting nuisances, sources of filth, and causes of sickness, within their respective townships, and on board of any vessels in their ports or harbors, as they shall judge necessary for the public health and safety, and if any person shall violate any such regulations, he shall forfeit a sum not exceeding one hundred dollars.

Respecting articles capable of conveying contagion, &c.

SEC. 4. The said board shall also make such regulations as they may deem necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into, or conveyed from their township, or into or from any vessel; and if any person shall violate any such regulation, he shall forfeit a sum not exceeding one hundred dollars.

Respecting interment of dead.

SEC. 5. The said board shall also make all regulations which they may deem necessary for the interment of the dead, and respecting burying-grounds in their township; and it shall also be the duty of said board to purchase in each surveyed township, so much land for burying-grounds as shall be necessary for burying the dead of such township.

SEC. 6. The board of health of the township in which such burying-grounds shall be, and their successors in office, shall hold the fee of such land in trust for such township; and they shall keep the same, or so much thereof as shall be necessary, surrounded with a good and substantial fence; the expenses of the purchase of such lands, and of fencing and regulating the same to be paid by the township.

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CHAPTER 35.

Board to hold ground in trust, &c.

SEC. 7. Notice shall be given by the board of health, of all regulations made by them, by publishing the same in some newspaper of the township, if there be one published therein, and if not, then by posting them up in five public places in such township; and such notice of said regulations shall be deemed legal notice to all persons.

Notice of regulations, how published.

SEC. 8. The board of health shall examine into all nuisances, sources of filth and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants within their township, or in any vessel within any harbor or port of such township; and the same shall destroy, remove, or prevent, as the case may require.

Board to examine into nuisances, &c., and destroy, remove or prevent the same

SEC. 9. Whenever any such nuisance, source of filth, or cause of sickness, shall be found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant shall neglect so to do, he shall forfeit a sum not exceeding one hundred dollars.

Proceedings, if nuisance, &c., found on private property.

SEC. 10. If the owner or occupant shall not comply with such order of the board of health, such board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same.

When nuisance, &c., to be removed by board at expense of owner, &c.

SEC. 11. Whenever any person shall be convicted on an indictment for a common nuisance that may be injurious to the public health, the court may, in its discretion, order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health of the township where the nuisance is found; and the form of the warrant to the sheriff or other officer may be varied accordingly.

Court may order nuisance removed in certain cases.

SEC. 12. Whenever the board of health shall think it necessary, for the preservation of the lives or health of the inhabitants, to enter any building or vessel in their township, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath, to any justice of the peace of his county, whether such justice be a member of such board or not, stating the facts of the case, so far as he has knowledge thereof.

Proceeding, when admittance of board, &c., is refused.

SEC. 13. Such justice may thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by any two or more members of said board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove or prevent, under the direction of such members of the board of health.

Ib.

SEC. 14. The board of health may grant permits for the removal of any nuisance, infected article or sick person, within the limits of their township, when they shall think it safe and proper so to do.

Board may permit removal of infected articles, &c.

SEC. 15. When any person coming from abroad, or residing in any township within this state, shall be infected, or shall lately before have



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Board to make provisions to prevent spread of small pox, &c.

been infected with the small pox, or other sickness dangerous to the public health, the board of health of the township where such person may be, shall make effectual provision in the manner in which they shall judge best for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without danger to his health, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself, his parents, or other person who may be liable for his support, if able; otherwise, at the charge of the county to which he belongs.

Provision in case infected persons cannot be removed.

SEC. 16. If any such infected person cannot be removed without danger to his health, the board of health shall make provision for him as directed in the preceding section, in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants.

Board may restrain travelers coming from infected districts.

SEC. 17. The board of health of any township near to, or bordering upon either of the neighboring states, may appoint, by writing under their hands, suitable persons to attend any places by which travelers may pass from infected places in other states; and the persons so appointed may examine such passengers as they may suspect of bringing with them any infection which may be dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by the board of health of the township to which such persons may come; and any person coming from such infected place, who shall without license as aforesaid, travel within this state, unless it be to travel by the most direct way to the state from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars.

Removal of persons infected.

SEC. 18. Any two justices of the peace may, if need be, make out a warrant under their hands, directed to the sheriff or any constable of the county, requiring him, under the direction of the board of health, to remove any person infected with contagious sickness, or to take possession of convenient houses [and] lodgings, and to provide for nurses, attendants, and other necessaries, for the accommodation, safety and relief of the sick.

Infected baggage, clothing, and goods, how secured.

SEC. 19. Whenever, on the application of the board of health, it shall be made to appear to any justice of the peace, that there is just cause to suspect that any baggage, clothing, or goods of any kind found within the township, are infected with any disease which may be dangerous to the public health, such justice of the peace shall, by warrant under his hand, directed to the sheriff or any constable of the county, require him to take with him as many men as the said justice shall deem necessary to secure such baggage, clothing, or other goods, and to post said men as a guard over the house or place where such baggage, clothing, or other goods shall be lodged, which guard shall take effectual care to prevent any person removing or coming near to such baggage, clothing, or other goods, until due inquiry be made into the circumstances thereof.

Impressing houses, &c., for keeping infected goods.

SEC. 20. The said justice may also, by the same warrant, if it shall appear to him necessary, require the said officer, under the direction of the board of health, to impress and take up convenient houses or stores, for the safe keeping of such baggage, clothing, or other goods; and the board of health may cause them to be removed to such houses or stores, or to be otherwise detained until they shall, in the opinion of said board of health, be freed from infection.

SEC. 21. Such officer, in the execution of such warrant, shall, if need be, break open any house, shop, or any other place mentioned in said warrant, where such baggage, clothing, or other goods shall be; and he may require such aid as shall be necessary to effect the execution of the warrant; and all persons shall, at the command of any such officer, under a penalty not exceeding ten dollars, assist in the execution of the warrant, if able to do so.

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Power of officer
executing war-
rant.

SEC. 22. The charges of securing such baggage, clothing, or other goods, and of transporting and purifying the same, shall be paid by the owner or owners thereof, at such rates and prices as shall be determined by the board of health.

Charges to be
paid by owner.

SEC. 23. Whenever the sheriff or other officer shall take possession of any houses, stores, lodgings, or other necessities, or shall employ any nurse or attendants, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the county in which such persons or property shall have been so employed or taken possession of.

Compensation
for houses, nur-
ses, &c.

SEC. 24. Whenever any person confined in any common jail, shall be attacked with any disease, which, in the opinion of the physician of the board of health, or of such other physicians as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the township, the board of health shall, by their order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept, so as to prevent his escape, until their further orders; and if such prisoner shall recover from the disease, he shall be returned to such jail.

When prisoners
attacked with
dangerous dis-
ease, may be re-
moved.

SEC. 25. If the person so removed shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the circuit court for the county; and no prisoner, removed as aforesaid, shall be considered as thereby having committed an escape.

Prisoners remov-
ed to be return-
ed, and not to be
considered as
having escaped.

SEC. 26. Whenever any pestilence or contagious disease shall break out in any county poor-house in this state, or in the vicinity thereof, and the physician to such county poor-house, or such other physician as the superintendents may consult, shall certify that such pestilence or disease is likely to endanger the health of the persons supported at such poor-house, the superintendents of such county poor-house shall cause the persons there supported, or any of them, to be removed to some other suitable place in the same county, and there to be maintained and provided for at the expense of the county, with all necessary medical attendance and care, until they can safely be returned to such poor-house, or otherwise discharged.

When superin-
tendents of poor
may remove
paupers from
poor houses,

Quarantine.

SEC. 27. Any township may establish a quarantine ground in any suitable place, either within or without its own limits: Provided, that if such place shall be without its limits, the assent of the township within whose limits it may be established, shall be first obtained therefor.

Township quar-
antine.

SEC. 28. Any two or more townships may, at their joint expense, establish a quarantine ground for their joint use, either within or with-

Quarantine for
two or more
townships

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Quarantine in township bordering on certain lakes, rivers, &c.

out their own limits : Provided, that if such place shall be without their limits, they shall first obtain the assent of the township within whose limits the same may be.

Quarantine regulations to extend to persons and goods in vessels.

Penalty for violating quarantine regulations.

Vessels in certain cases to be removed to quarantine ground, &c.

Master, &c., to answer on oath in regard to infections.

Expenses, by whom to be paid.

Hospitals for reception of persons having small pox, &c.

By whom hospitals to be regulated, &c.

SEC. 29. The board of health in each township in this state bordering upon lake Michigan, lake Superior, lake Huron, lake St. Clair or lake Erie, or upon any of the principal rivers or straits connecting together any of the said lakes, or bordering upon any navigable waters uniting with any of the said lakes, rivers or straits, may from time to time establish the quarantine to be performed by all vessels arriving within the limits of such townships, and may make such quarantine regulations as they shall judge necessary for the health and safety of the inhabitants.

SEC. 30. The quarantine regulations so established, shall extend to all persons, and all goods and effects, arriving in such vessels, and to all persons who may visit or go on board of the same.

SEC. 31. The said quarantine regulations, after notice shall have been given in the manner before provided in this chapter, shall be observed and complied with by all persons ; and any person who shall violate any such regulations, shall forfeit a sum not less than five dollars, and not more than five hundred dollars.

SEC. 32. The board of health in each township bordering upon any of the lakes, rivers, straits, or other navigable waters hereinbefore mentioned, may at all times cause any vessel arriving within the limits of the township, when such vessel or the cargo thereof shall, in their opinion, be foul or infected, so as to endanger the public health, to be removed to the quarantine ground, and to be thoroughly purified, at the expense of the owners, consignees, or persons in possession of the same ; and they may also cause all persons arriving in, or going on board of such infected vessel, or handling such infected cargo, to be removed to any hospital under the care of the said board of health, there to remain under their orders.

SEC. 33. If any master, seaman or passenger, belonging to any vessel on board of which any infection may then be, or may have lately been, or which may have been at, or which may have come from, any port or place where any infectious disease prevails, that may endanger the public health, shall refuse to answer on oath, to be administered by any member of such board, such questions as may be asked him, relating to such infection or disease, by any member of the board of health of the township to which such vessel may come, such master, seaman or passenger, so refusing, shall forfeit a sum not exceeding two-hundred dollars ; and in case he shall not pay such sum, he shall suffer six months imprisonment.

SEC. 34. All expenses incurred on account of any person, vessel or goods, under any quarantine regulations, shall be paid by such person, or by the owner of such vessel or goods respectively.

Small Pox, and other Dangerous Diseases.

SEC. 35. The inhabitants of any township may establish within their township, and be constantly provided with, one or more hospitals for the reception of persons having the small pox, or other disease which may be dangerous to the public health.

SEC. 36. All such hospitals shall be subject to the orders and regulations of the board of health, or a committee appointed by such board for that purpose ; but no such hospital shall be established with-

in one hundred rods of any inhabited dwelling house situated in an adjoining township, without the consent of such adjoining township.

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SEC. 37. If any person shall inoculate any other person, or inoculate himself, or suffer himself to be inoculated with the small pox, unless at some hospital licensed and authorized by law, he shall for each offence forfeit a sum not exceeding two hundred dollars.

Penalty for inoculating with small pox, except at hospitals.

SEC. 38. When any hospital shall be so established, the physician attending the same, the persons inoculated or sick therein, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such furniture and other articles as shall be used or brought there, shall be subject to such regulations as shall be made by the board of health, or of the committee appointed for that purpose.

Physicians, &c., to be subject to regulations of board, &c.

SEC. 39. When the small pox, or any other disease dangerous to the public health, shall break out in any township, the board of health shall immediately provide such hospital or place of reception for the sick and infected, as they shall judge best for their accommodation, and the safety of the inhabitants; and such hospitals and places of reception, shall be subject to the regulations of the board of health, in the same manner as hereinbefore provided for established hospitals.

When board of health to provide hospital.

SEC. 40. The board of health shall cause such sick or infected persons to be removed to such hospitals or places of reception, unless the condition of the sick person be such as not to admit of removal without danger of life; in which case the house or place where the sick shall remain, shall be considered as a hospital to every purpose before mentioned, and all persons residing in, or in any way concerned with the same, shall be subject to the regulations of the board of health, as before provided.

When infected persons to be removed to hospital, &c.

SEC. 41. When the small pox, or any other disease dangerous to the public health, is found to exist in any township, the board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by such means as in their judgment shall be most effectual for the common safety.

Board to prevent the spread of dangerous disease.

SEC. 42. If any physician or other person, in any of the hospitals or places of reception before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property; the person so offending shall, for each offence, forfeit a sum not less than ten, nor more than one hundred dollars.

Penalty for violating regulations of hospitals.

SEC. 43. Whenever any householder shall know that any person within his family is taken sick with the small pox, or any other disease dangerous to the public health, he shall immediately give notice thereof to the board of health, or to the health officer of the township in which he resides; and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

House holders to give notice of disease; penalty for neglect.

SEC. 44. Whenever any physician shall know that any person whom he is called to visit, is infected with the small pox, or any other disease dangerous to the public health, such physician shall immediately give notice thereof to the board of health, or health officer of the township in which such diseased person may be; and every physician who shall refuse or neglect to give such notice, shall forfeit for each offence, a sum not less than fifty, nor more than one hundred dollars.

Penalty on physician neglecting to give notice.

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Inoculation with
cow pox.

SEC. 45. Every township may, at any meeting, make suitable provision for the inoculation of the inhabitants thereof with the cow pox, under the direction of the board of health, or the health officer of the township, and they shall raise all necessary sums of money to defray the expenses of such inoculation, in the same manner that other township charges are defrayed.

Offensive Trades.

Places may be
assigned for
carrying on of-
fensive trades.

SEC. 46. The township board of every township, the president and trustees, or council, of every village, and the mayor and aldermen of every city, respectively, when they shall judge it necessary, shall, from time to time, assign certain places for the exercising of any trade or employment, offensive to the inhabitants, or dangerous to the public health; and they shall forbid the exercise thereof in places not so assigned; and all such assignments shall be entered in the records of the township, village or city, and they may be revoked when the said township, village, or city officers may think proper.

When places be-
come a nuisance
assignment may
be revoked, &c.

SEC. 47. When any place or building so assigned shall become a nuisance by reason of offensive smells or exhalations proceeding therefrom, or shall become otherwise hurtful or dangerous to the neighborhood or to travellers, and the same shall be made to appear on a trial, or the admission of the person exercising such trade or employment, before the circuit court for the county, upon a complaint made by the board of health, or by any other person, the said court may revoke such assignment, and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

Action on the
case for damages.

SEC. 48. Any person injured, either in his comfort, or the enjoyment of his estate, by any such nuisance, may have an action on the case for the damages sustained thereby, in which action, the defendants may plead the general issue, and give any special matter in evidence.

Boards of Health in Cities and Villages.

Who to consti-
tute board in ci-
ties and villages.

SEC. 49. The mayor and aldermen of each incorporated city, and the president and council, or trustees, of each incorporated village in this state, shall have and exercise all the powers, and perform all the duties of a board of health as provided in this chapter, within the limits of the cities or villages respectively, of which they are such officers.

CHAPTER 36.

**OF MEDICAL SOCIETIES, AND REGULATIONS CONCERNING THE PRACTICE
OF PHYSIC AND SURGERY.**

State medical
society contin-
ued.

SECTION 1. The medical society which was incorporated within the late territory of Michigan, by the name and style of "The Medical Society of the Territory of Michigan," shall continue to be a body politic and corporate under the name and style of "The Medical Society of the State of Michigan," and by that name shall be capable

in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places, and in all causes and matters whatsoever; and shall have and use a common seal, and may alter the same at pleasure; and may annually elect by ballot, a president, vice president, secretary and treasurer, who shall hold their offices for one year, and until others are elected in their places.

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Laws of Mich-
gan. 1827, p. 530.

SEC. 2. The physicians and surgeons in the several counties within this state, may meet together in their respective counties, on such day, and at such place within such counties as a majority of them shall deem proper; and the said physicians and surgeons, or any of them, not being less than four in number, being so assembled, may choose by ballot, a president, vice president, secretary and treasurer, who shall hold their offices for one year, and until others shall be chosen in their places.

Physicians and
surgeons in
counties may
meet and choose
officers, &c.

SEC. 3. When such societies shall be so organized, they shall each be a body politic and corporate, in fact and in name, by the name of "the medical society of the county of _____;" (the name of the county where formed,) and by such name shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places, and in all causes and matters whatsoever.

County societies
to be bodies cor-
porate, &c.

SEC. 4. No physicians and surgeons shall be authorized to form a county medical society under the provisions of this chapter, except such as shall be in regular standing in the medical society of this state, or in some county medical society organized according to law.

Physicians and
surgeons to be in
regular standing.

SEC. 5. All the county medical societies heretofore incorporated and established under the provisions of the revised statutes of this state, are hereby established and confirmed in all their rights, privileges, authorities and powers, subject to the provisions hereinafter contained, respecting the county medical societies.

Medical societies
heretofore incor-
porated, estab-
lished and con-
firmed.

SEC. 6. The county medical societies heretofore incorporated, or which shall hereafter be incorporated, may, at their first meetings to be holden under the provisions of this chapter, agree upon the times and places of holding their annual meetings; but such times and places may be changed by said societies respectively, at any annual meeting, by a vote of a majority of all the members of the society, and the secretary of each of said societies shall lodge in the office of the clerk of the proper county, a copy of all the proceedings had at the first meeting thereof, and said clerk shall file and preserve the same, and may receive therefor twelve and a half cents.

Annual meetings

SEC. 7. The medical societies established as aforesaid, may examine all students who shall present themselves for that purpose, and if found qualified, may license them to practice as physicians and surgeons, and give diplomas therefor, under the hand of the president and the seal of the society before whom such students shall be examined; which diploma shall be sufficient to authorize the person obtaining the same, to practice physic or surgery, or both, as shall be set forth in such diploma, in any part of this state.

Examination of
students, and
granting of di-
plomas.

SEC. 8. Any student of medicine who shall present himself to the censors of either of the county medical societies for examination, and shall be found unqualified for the practice of physic and surgery, shall not be admitted to another examination before the censors of any medical society, within six months after the time he shall have been

When applicant
rejected, not to
be admitted
within six
months.

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When applicant rejected by state medical society, not to be licensed by county society.

Censors to be appointed, their oath.

To what amount societies may hold real and personal estate.

No person under twenty-one years of age to be licensed.

Where application for license to be made.

All the censors to be notified of application.

When member may be suspended, and his license annulled.

Notice to person charged.

Evidence on examination, and appeal to state society.

found unqualified as aforesaid; but such applicant may, in all cases in which he may think himself aggrieved, appeal to the censors of the medical society of the state.

SEC. 9. When any student shall have been examined by the censors of the medical society of the state, and rejected, he shall not at any time thereafter be examined or licensed by any county medical society, but shall in all such cases make application thereafter to the state medical society for examination and license; and any license obtained contrary to the provisions of this chapter shall be absolutely void.

SEC. 10. Each of the medical societies aforesaid, may, at its annual meeting, appoint not less than three, nor more than five censors, to continue in office for one year, and until others are chosen in their places, who shall take an oath that they will carefully and impartially examine all students who shall present themselves for that purpose, and report their opinions in writing to the president of the society.

SEC. 11. The said medical societies may severally purchase and hold, for the use of said societies respectively, real and personal estate; but the medical society of the state shall not hold such estate to an amount exceeding twenty-five thousand dollars, nor shall any county medical society hold such estate to an amount exceeding five thousand dollars.

SEC. 12. No person under the age of twenty-one years, shall be licensed to practice as a physician or surgeon in this state.

SEC. 13. Each medical student, who shall apply for a license to practice as a physician and surgeon, shall make such application to the medical society of the county where he resides, or where he pursued his studies; and if there be no medical society in such county, he shall make his application to the state medical society.

SEC. 14. The censors of a county medical society, shall not in any case proceed to examine any applicant for such license, unless all the censors of the society shall have been duly notified of the application, and also of the time and place of the examination; nor unless a majority of such censors shall be present.

SEC. 15. Upon complaint in writing, filed with any county medical society, charging any member of such society with any infamous crime, habitual drunkenness, or with gross ignorance, immorality, or incompetency, such society, at any regular meeting, may proceed to investigate such complaint, and if upon such investigation, and due proof of the facts so charged, the person so complained of shall be found guilty by a vote of two-thirds of all the members present, such society may suspend such person from further membership, and may annul the license of such person.

SEC. 16. No investigation of such charges shall be made until after due notice to the person charged, of the filing of such charges, and a copy of such charges shall first have been given to the person complained of, at least thirty days before the day when such investigation shall take place.

SEC. 17. The evidence given on such investigation shall be on oath, which may be administered by the president of the society, or any justice of the peace, and shall be reduced to writing, and filed with the records of the society; and if the person suspended shall conceive himself aggrieved by the decision of the society, he may appeal to the state medical society, and the said state medical society shall

thereupon, at some regular meeting, inquire into and examine the proceedings of the county medical society on such complaint, and may, when they shall deem it proper, annul such suspension, and restore to the person suspended, all the rights and privileges of a licensed physician and surgeon.

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SEC. 18. On such appeal being claimed, such county medical society shall forthwith cause a copy of the said complaint and charges, together with a copy of all the evidence, and the proceedings of such society thereon, to be certified by their secretary, and sent to the president of the state medical society.

When complaint &c., to be certified and transmitted.

SEC. 19. On the investigation of any charges, as provided in this chapter, the president of the county medical society before which the same may be had, may, on application made to him for that purpose, issue subpoenas to compel the attendance of any witnesses residing within this state, which subpoenas shall be tested in the name of such president, and signed by the secretary of such society, and may be served and returned by any proper officer of the county, or by any other person.

Subpoenas for witnesses.

SEC. 20. If, upon due service of such subpoena, and payment or tender of the fees allowed by law for attendance upon courts of record, any witness shall neglect or refuse, without sufficient cause, to appear at the time and place specified in such subpoena, he shall forfeit the sum of twenty-five dollars, and shall also be liable to the party aggrieved for all damages occasioned by such neglect or refusal.

Penalty, &c., for disobeying subpoenas.

SEC. 21. Any county medical society, at any regular meeting, may remove and annul any suspension which may have been made by such society, by a vote of two-thirds of all the members present: Provided, notice of the intended motion to remove such suspension shall have been given at a previous meeting of the society.

When suspension may be annulled by county society.

SEC. 22. Each medical society may make such by-laws and regulations, relative to the affairs, concerns and property of the society, and relative to the admission and expulsion of its members, as a majority of the members thereof, at their annual meeting, shall think proper: Provided, such by-laws and regulations shall not be contrary to, nor inconsistent with the laws of this state.

By-laws and regulations.

SEC. 23. The treasurer of each medical society shall receive, and be accountable for all moneys that may come into his hands by virtue of the by-laws, and all that may be paid for the admission of members or licensing students; and the treasurer shall account for such moneys to the society, at its annual meetings; and no money shall be drawn from the treasury of the society, unless by a vote or order of the society, and on the warrant of the president.

Treasurer.

SEC. 24. The secretary of each medical society shall keep a book, in which he shall enter all the resolutions and proceedings of the society, the name of each member, the time of his admission, the annual reports of the state of the treasury, and all such other things as the society may direct, to which book every member of the society may at all times have access; and the said secretary shall deliver all books, papers and records belonging to the society, and under his care and control, to his successor in office.

Secretary.

SEC. 25. Each medical society may cause to be raised and collected from each member thereof, a sum not exceeding three dollars in a year, for the purpose of procuring a medical library, and for the encouragement of useful discoveries in chemistry and botany, and such other improvements as the society may think proper.

Moneys may be raised, for what purposes.

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Admission fees.

SEC. 26. Each student, on receiving a diploma from the state medical society, shall pay to the president thereof ten dollars, and on receiving a diploma from any county medical society, each student shall pay to the president thereof five dollars; which sums the president shall pay to the treasurer of said societies respectively.

Election of members of state society.

SEC. 27. The state medical society may elect by ballot, at its annual meeting, eminent physicians and surgeons residing within this state, which persons so elected, shall be permanent members of the society, and entitled to all the privileges of the same; but no more than two such members shall be elected in any one year, and such members shall not receive for their attendance any compensation from the funds of the society.

Copy of license to be deposited with clerk of county.

SEC. 28. All persons who may hereafter be licensed as physicians or surgeons, within this state, shall deposit a copy of such license with the clerk of the county in which such practitioner may reside; and for filing such copy, the clerk shall be entitled to receive twelve and a half cents.

When physicians &c., may associate themselves with society in adjoining county.

SEC. 29. If there shall not be a sufficient number of physicians and surgeons in any county to form themselves into a medical society under the provisions of this chapter, the physicians and surgeons residing in such county, may associate themselves with a medical society in an adjoining county.

When vice president to perform duties of president.

SEC. 30. In case of the death, resignation, removal, or absence of the president of any medical society, the vice president may, for the time being, perform all the duties, and exercise all the powers of the president.

Bodies of certain criminals to be delivered to county societies.

SEC. 31. In each county of this state in which a county medical society shall be established according to the provisions of this chapter, the keeper of the jail of such county shall deliver to any agent of said society, on the presentation of an order signed by the president thereof, the bodies of all criminals who shall die in such jail under sentence of six months imprisonment, or more, unless the friends or relations of the deceased shall claim the same for interment, or unless the criminal or his friends shall have made provision for his burial.

1844, p. 73.

Bodies of certain criminals to be delivered to state society.

SEC. 32. The officers of the state prison shall deliver to any agent of the medical society of the state, on the presentation of an order signed by the president of such society, the bodies of all criminals who shall die in said prison; unless the friends or relatives of the deceased shall claim the same for interment, or unless the criminal or his friends shall have made provision for his burial.

1844, p. 73.

When medical department of university to have bodies.
1844, p. 73.

SEC. 33. Whenever the medical department of the university of Michigan shall be organized, said department shall be entitled to the exclusive privilege conferred upon the medical society of the state by the preceding section.

Who to be officers of societies.

SEC. 34. The officers of the state medical society, and the officers of the several county medical societies, last elected, shall be the officers of such societies respectively until others are duly elected.

Presidents of county societies to be members of state society.

SEC. 35. The president of each county medical society shall be ex-officio a member of the state medical society, and shall be entitled to represent the county medical society of which he is president in the state medical society.

Person falsely representing himself to be physician, &c., guilty of misdemeanor.

SEC. 36. Every person who shall falsely represent himself to be a duly licensed physician or surgeon, and shall procure himself to be employed as such, shall be deemed guilty of a misdemeanor, and on

conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both in the discretion of the court.

SEC. 37. If any person professing or holding himself out to be a physician or surgeon, shall be guilty of any neglect or mal-practice, an action on the case may be maintained against such person so professing, and the rules of the common law applicable to such actions against licensed physicians and surgeons, shall be applicable to such actions on the case; and such mal-practice or neglect may be given in evidence in bar of any action for services rendered by such person so professing.

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Actions for mal-
practice in cer-
tain cases.



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TITLE IX.

OF THE INTERNAL POLICE OF THE STATE.

- Chapter 37. Of the Support of Poor Persons by their Relatives.
- Chapter 38. Of the Support of Poor Persons by Counties.
- Chapter 39. Of Disorderly Persons.
- Chapter 40. Of the Racing of Animals.
- Chapter 41. Of Taverns and other Licensed Houses.
- Chapter 42. Of the Maintenance of Hlegitimate Children.
- Chapter 43. Of the Observance of the First Day of the Week, and the Prevention and Punishment of Immorality.
- Chapter 44. Of the Law of the Road and the Regulation of Public Carriages.
- Chapter 45. Of the Firing of Woods and Prairies.
- Chapter 46. Of Timber and Lumber floating on Waters and carried upon adjoining Lands.
- Chapter 47. Of Lost Goods and Stray Beasts.
- Chapter 48. Of Fire Departments in Cities and Villages.
- Chapter 49. Of certain Municipal Regulations of Police.
- Chapter 50. Of Unauthorised Banking, and certain Notes or Evidences of Debt issued by Banks.
- Chapter 51. Of the Destruction of Wolves and other Noxious Animals.

CHAPTER 37.

OF THE SUPPORT OF POOR PERSONS BY THEIR RELATIVES.

Certain persons to support poor relations.

SECTION 1. The father, mother, and children, being of sufficient ability, of any poor person who is blind, old, lame, impotent or decrepit, so as to be unable to maintain himself, shall at their own charge, relieve and maintain such poor person, in such manner as shall be approved by the directors of the poor of the township where such poor person may be.

In case of failure, superintendents to apply to circuit court.

SEC. 2. Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of the superintendents of the poor of the county where such poor person may be, to apply to the circuit court for the county where such relative may dwell, for an order to compel such relief; of which application at least fourteen days' notice in writing shall be given by serving the same personally, or by leaving the same at the dwelling place of the person to whom it may be directed, in case of his absence therefrom, with some person of sufficient age.

Court to make order.

SEC. 3. The court to which such application may be made, shall pro-

ceed in a summary way to hear the proofs and allegations of the parties, and shall order such of the relatives aforesaid, of such poor person, as appear to be of sufficient ability, to relieve and maintain such poor person, and shall therein specify the sum which will be sufficient for the support of such poor person, to be paid weekly.

SEC. 4. The said court shall also in such orders direct the relative or relatives who shall perform that duty, in the following order: the father shall be first required to maintain such poor person, if of sufficient ability; if there be no father, or he be not of sufficient ability, then the children of such poor person; if there be no such children, or they be not of sufficient ability, then the mother, if she be able to do so.

Order in which relations are liable.

SEC. 5. If it shall appear that any such relative is unable wholly to maintain such poor person, but is able to contribute towards his support, the court may, in its discretion, direct two or more relatives of different degrees to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear that the relatives liable as aforesaid, are not of sufficient ability wholly to maintain such poor person, but are able to contribute something therefor, the court shall direct the sum, in proportion to their ability, which such relations shall severally pay weekly for that purpose.

Contribution, when to be ordered.

SEC. 6. Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said sums so directed by the court shall be paid, or it may be indefinite, or until the further order of the court; and the said court may from time to time vary such order, whenever circumstances shall require it, on the application either of any relative affected thereby, or of any superintendent of the poor, upon fourteen days' notice being given in the manner aforesaid.

Order what to specify; may be varied in certain cases.

SEC. 7. The costs and expenses of any application under the provisions of this chapter, shall be ascertained by the court, and paid by the relatives against whom any order may be made, and the payment thereof, and obedience to the order of maintenance, and to any order of such court for the payment of money as aforesaid, may be enforced by process of attachment from such court.

Payment of costs and expenses, &c. how enforced.

SEC. 8. If any relative who shall have been required by such order to relieve or maintain any poor person shall neglect to do so in such manner as shall be approved by the directors of the poor of the township where such poor person may be, and shall neglect to pay to the superintendents of the poor of the county, weekly, the sum prescribed by the court for the support of such poor person, the said superintendents may maintain an action against such relatives, as for moneys paid, laid out and expended, and shall recover therein the sum so prescribed by the said court for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

Action may be brought by superintendents in case of neglect, &c.

SEC. 9. Whenever the father, or the mother being a widow, or living separate from her husband, shall abscond from his or her children, or a husband from his wife, leaving any of them chargeable, or likely to become chargeable upon the public for their support, the superintendents of the poor of the county where such wife or children may be, may apply to any two justices of the peace of any county in which any estate, real or personal, of the said father, mother or husband may be situated, for a warrant to seize the same.

When superintendents may apply for warrant to seize estate of person absconding.

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When warrant
to issue, and du-
ty of superinten-
dents thereon.

SEC. 10. Upon due proof of the facts aforesaid, the said justices shall issue their warrant, authorizing the said superintendents to take and seize the goods, chattles, effects, things in action, and the lands and tenements of the person so absconding; and the said superintendents, by virtue of such warrant, may seize and take the said property, things in action, and effects, wherever the same may be found in the same county, and they shall be vested with all the rights and title to the said property, things in action, and effects, which the person so absconding had at the time of his or her departure.

Sales by owner
after warrant is-
sued to be void.

SEC. 11. All sales and transfers of any personal property left in the county from which such person absconded, made by him or her after the issuing of such warrant, whether in payment of an antecedent debt, or for a new consideration, shall be absolutely void; and the said superintendents shall immediately make an inventory of the property, things in action, and effects so seized by them, and return the same with their proceedings, to the next circuit court for the county in which [such] superintendents reside, there to be filed.

Inventory and
return by super-
intendents.

Circuit court
may confirm a
discharge war-
rant, &c.

SEC. 12. The said circuit court, upon inquiring into the facts and circumstances of the case, may confirm the said warrant and seizure, or may discharge the same; and if the same be confirmed, such court shall from time to time direct what part of the personal property shall be sold, and how much of the proceeds of such sale, and of the rents and profits of the real estate, if any, shall be applied towards the maintenance of the wife and children of the person so absconding.

Order for sale.

Sale of property,
and application
of proceeds.

SEC. 13. The superintendents shall sell, at public vendue, the property so ordered to be sold, and receive the rents and profits of the real estate of the person so absconding, and shall apply the same to the maintenance and support of the wife or children of the person so absconded, and for that purpose shall draw on the county treasurer therefor; and they shall account to the said circuit court for all moneys so received by them, and for the application thereof, from time to time, and may be compelled by said court to render such account at any time.

When two justi-
ces may dis-
charge order.

SEC. 14. If the party so absconding return and support the wife or children so abandoned, or give security to the superintendents of the poor of such county, to be approved by two justices of the peace of such county, that the wife or children so abandoned shall not become, or thereafter be chargeable to the county, then such warrant shall be discharged by an order of such justices, and the property taken by virtue thereof, and remaining unappropriated, or the proceeds thereof, after deducting the expenses of the proceedings aforesaid, shall be restored to such party.

CHAPTER 38.

OF THE SUPPORT OF POOR PERSONS BY COUNTIES.

Poor persons,
when to be main-
tained by coun-
ty.

SECTION 1. Every poor person who is blind, old, lame, sick or decrepit, or in any other way disabled or enfeebled, so as to be unable to maintain himself, and who shall not be relieved or maintained by his relatives as provided in the preceding chapter, shall be maintained by

the county in which he may be, according to the following provisions.

SEC. 2. It shall be the duty of the board of supervisors of each county, at their annual meeting in each year, to appoint three discreet freeholders of such county to be superintendents of the poor within the same, who shall hold their offices for one year, and until others shall be appointed in their places and duly qualified, and who shall take the oath of office prescribed in the twelfth article of the constitution, and file the same with the county clerk.

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Appointment of
superintendents,
their oath of of-
fice.

SEC. 3. A majority of the persons so appointed shall be at all times competent to transact business, and to execute any powers vested in the board of superintendents; and they shall be allowed such sum for their actual attendance and services, as the board of supervisors of the county shall deem reasonable.

Compensation.

SEC. 4. They shall be a corporation by the name of the superintendents of the poor of the county for which they shall be appointed, and shall possess the usual powers of a corporation for public purposes, and they shall meet as often as the board of supervisors of the county shall direct, at the county poor-house, if there be one, and if not, then at the place of holding the circuit courts in their county, and at such other times and places as they shall deem necessary.

To be a corpora-
tion, their pow-
ers as such, &c.

SEC. 5. They shall have the general superintendence of all the poor who may be in their respective counties, and shall have power, and it shall be their duty,

Specification of
certain powers
and duties.

1. To have charge of the county poor-houses that have been or shall be erected, and to provide suitable places for the keeping [of] such poor, when so directed by the board of supervisors, when houses for that purpose shall not have been erected by the county; and for that purpose to rent a tenement or tenements, and land not exceeding eighty acres, and to cause the poor of the county to be maintained at such places:

2. To ordain and establish prudential rules, regulations and by-laws, for the government and good order of such places so provided, and of the county poor-houses, and for the employment, relief, management, and government of the persons therein placed; but such rules, regulations and by-laws shall not be valid until sanctioned by the judges of the county court:

3. To employ one or more suitable persons to be keepers of such houses or places, and all necessary officers and servants; and to vest in them such powers for the government of such houses as shall be necessary, reserving to the paupers who may be placed under the care of such keepers, the right to appeal to the superintendents:

4. To purchase the furniture, implements, and materials that shall be necessary for the maintenance of the poor, and their employment in labor, and to sell and dispose of the proceeds of such labor as they shall deem expedient:

5. To prescribe the rate of allowance to be made by any persons for bringing paupers to the county poor-house or place provided for the poor, subject to such alterations as the board of supervisors may, by general resolution, make:

6. To authorize the keepers of such houses or places, to certify the amount due to any person for bringing such paupers; which amount shall be paid by the county treasurer, on the production of such certificate, countersigned and allowed by any two of the superintendents:

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7. To direct the commencement of suits by any directors of the poor, who may be entitled to prosecute upon any recognizances, bonds or securities, taken for the indemnity of any township or of the county, and in case of the neglect of any such directors, to commence and conduct such suits, without the authority of such directors, in their names :

8. To draw from time to time on the county treasurer for all necessary expenses incurred in the discharge of their duties ; which drafts shall be paid by him out of the moneys placed in his hands for the support of the poor :

9. To render to the board of supervisors of their county, at their annual meeting, an account of all moneys received and expended by them or under their direction, and of all their proceedings :

10. To pay over all moneys remaining in their hands to the county treasurer, within fifteen days after the expiration of their office.

Board of super-
visors may de-
termine to erect
poor house, and
direct superin-
tendents to pur-
chase land.

SEC. 6. The board of supervisors of any county in this state, in which a county poor-house is not already erected, may at any annual or special meeting thereof, determine to erect such house for the reception of the poor of their county ; and upon filing such determination with the clerk of the county, they may direct the superintendents of the poor of such county to purchase one or more tracts of land, not exceeding three hundred and twenty acres, and to erect thereon one or more suitable buildings for the purpose aforesaid.

Tax to defray
expenses of
building, &c.

SEC. 7. To defray the expenses of such purchase and buildings, the said board of supervisors may raise, by tax on the taxable real and personal property within the same county, a sum not exceeding seven thousand dollars, in such instalments, and at such times as they may judge expedient ; and such tax shall be raised, assessed and collected, in the same manner as the other county charges, and shall be paid by the county treasurer upon the order of the superintendents of the poor, to be applied for the purposes aforesaid.

When poor per-
son to be remov-
ed to poor-house.

SEC. 8. When any person shall apply for relief to any director of the poor, or to any superintendent, he shall inquire into the state and circumstances of the applicant, and if it shall appear that the person so applying is in such indigent circumstances as to require permanent relief and support, and can be safely removed, the director or superintendent shall, by a written order, cause such poor person to be removed to the county poor-house, to be relieved and provided for as his necessities may require.

To be received
and relieved.

SEC. 9. Every such person so removed, shall be received by the keeper of the county poor-house, and shall be supported and relieved therein, under the direction of the superintendents, until it shall appear to them that such person is able to maintain himself, when the said superintendents may, in their discretion, discharge him.

Expense of re-
moval, how paid.

SEC. 10. The expense of such removal shall be paid by the county treasurer, on the certificate of the keeper, countersigned as aforesaid, at the rate which shall have been prescribed by the superintendents.

Directors, when
to be allowed
moneys paid out
by them.

SEC. 11. The directors of the poor shall be allowed such sums necessarily paid out, or contracted to be paid by them, for the relief or support of such pauper previous to such removal, as the superintendents shall judge were reasonably expended while it is improper to remove such pauper ; which sums shall be paid by the county treasurer on the order of the superintendents.

SEC. 12. If it shall appear that any such poor person so applying

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for relief as aforesaid, requires only temporary relief, or is so sick, lame, or otherwise disabled that he cannot be safely or conveniently removed to the poor-house, and the application be made to a director, he shall apply to a justice of the peace of the same township, who shall examine into the facts and circumstances, and shall, in writing, order such sum to be expended for the temporary relief of such poor person as he shall deem the circumstances of the case to require.

When justice to order amount to be expended for temporary relief.

SEC. 13. Such order shall entitle the director to receive any sum which he may have paid out or contracted to pay within the amount therein specified, from the county treasurer; but no greater sum than twenty dollars shall be so expended or paid for the relief of any one person, or one family, without the sanction, in writing, of one of the superintendents of the poor of the county, which shall be presented to the county treasurer with the order of the justice.

County treasurer to pay amount expended, &c.

SEC. 14. The superintendents may provide for the support of paupers that may be idiots or lunatics, out of the county poor-house, in such place, and in such manner as shall best promote the interests of the county, and conduce to the comfort and recovery of such paupers.

Provision for support of idiots and lunatics out of poor house.

SEC. 15. Any person who shall send, carry, transport, remove or bring, or who shall cause or procure to be sent, carried, transported, removed or brought, any poor or indigent person from any county, into any other county, without legal authority, and there leave such poor person, or who shall entice such poor person so to remove, with intent to make any such county to which the removal shall be made, chargeable with the support of such pauper, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail not exceeding one year, or fined not exceeding two hundred dollars, or both, in the discretion of the court.

Punishment for removing paupers from one county to another.

SEC. 16. The pauper so brought, removed or enticed, shall be maintained and provided for by the superintendents of the poor of the county where he may be, and the said superintendents may give notice to either of the superintendents of the poor of the county from which such pauper removed, or was brought or enticed, informing them of such improper removal, and requiring them forthwith to take charge of such pauper.

Paupers removed, &c., where to be maintained. Notice may be given.

SEC. 17. The superintendents to whom such notice may be directed shall, within thirty days after the service thereof, take and remove such pauper to their county, and pay the expenses incurred in giving such notice, and in maintaining such pauper from the time of his becoming a charge to the county in which he is maintained; or they shall, within the time aforesaid, notify the superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper removal or enticing.

Superintendents receiving notice to pay expenses, &c., or deny the allegation of removal within twenty days.

SEC. 18. If the superintendents to whom a notice shall have been given as provided in the sixteenth section of this chapter, shall omit to take and remove such pauper, and also neglect to notify such denial within the time aforesaid, they shall be liable for said expenses so long as such pauper shall remain a charge; and an action for such expenses may be maintained from time to time by, and in the name of the superintendents incurring the same, or their successors in office, against the superintendents so made liable, and their successors in office.

If superintendents to whom notice is given omit to remove pauper, &c., they and their successors liable.

SEC. 19. Upon receiving any such notice of denial as aforesaid, the superintendents upon whom the same may have been served, shall,

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On receiving notice of denial, action to be commenced; consequence of neglect.

Who not to be superintendent.

Keepers exempt from militia service, &c.

Places provided by superintendents to be deemed poor-houses.

Education of pauper children.

Liability of person removing pauper from another state.

Magistrate may require security.

Moneys received for licenses to be paid to county treasurer; forfeiture, &c., for neglect.

within three months thereafter, commence an action against the superintendents of the poor of the county to whom the first notice was directed, for the expenses of supporting such pauper, as for moneys paid, laid out and expended, and shall prosecute the same to effect; and if such action be not commenced within the time aforesaid, the same shall be forever barred, and no action shall thereafter be brought for any expenses incurred in supporting or maintaining such pauper.

SEC. 20. No supervisor of any township, prosecuting attorney of any county, county clerk, or county treasurer, shall be appointed to, or hold the office of superintendent of the poor.

SEC. 21. The keeper of every poor-house shall be exempt from all service in the militia, and from serving on juries during the time he shall be such keeper.

SEC. 22. The places which shall be provided for the reception of the poor, by the county superintendents, pursuant to the provisions of this chapter, shall in all cases be deemed to be the county poor-house; and all the provisions of this chapter, applicable to county poor-houses, shall extend and apply to such places.

SEC. 23. The superintendents of the poor of each county shall cause the paupers of such county, who may be over five and under sixteen years of age, to be taught and educated, in the same manner that other children are taught in the primary schools of this state, at least one-half of the time such paupers shall remain under their charge; and the expense thereof shall be paid in the same manner as other contingent expenses are paid for the support of such paupers.

SEC. 24. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county within it, with intent to make such county chargeable with the support of such paupers, shall forfeit and pay fifty dollars, to be recovered before any justice of the peace of the county into which such pauper shall be brought, or in which the offender may be; and shall also be obliged to convey such pauper out of the state, or support him at his own expense.

SEC. 25. It shall be lawful for the justice or court before whom such person shall be convicted for a violation of the provisions of the preceding section, to require of such person satisfactory security that he will, within a reasonable time to be named by the justice or court, transport such person out of the state, or indemnify such county for all charges and expenses which may have been, or may be incurred in the support of such pauper; and if such person shall neglect or refuse to give such security when required, it shall be the duty of the justice or court, to commit him to the county jail for a term not exceeding three months.

SEC. 26. All moneys which shall be received for licenses to tavern keepers, common victuallers or retailers of spirituous liquors, in any township, city or incorporated village, shall be paid over by the officers respectively receiving the same, to the county treasurer, within thirty days after the receipt thereof; and any officer who shall neglect to pay over such moneys within the time aforesaid, shall forfeit and pay the sum of fifty dollars, and shall also be liable to an action by, and in the name of the county treasurer, as for money had and received, for all moneys so received by him, with interest thereon from the time when the same should have been paid over.

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Moneys received by directors and superintendents to be paid to treasurer, &c.

SEC. 27. All moneys which shall be collected by any superintendents, or by the directors of the poor of any township, or received by any of them on any bond or other security given for the benefit or indemnity of any county, or of any township; and all other moneys which shall be received by such superintendents or directors for the benefit of the poor, shall be by them paid over, within thirty days after the receipt of the same, to the county treasurer; and if not so paid, the same may be recovered in an action as for money had and received, to be brought by, and in the name of the county treasurer, with interest, at the rate of ten per cent. from the time the same should have been paid over.

SEC. 28. Every superintendent who shall neglect or refuse so to render an account or statement, or to pay over any moneys as required in this chapter, shall forfeit the sum of two hundred and fifty dollars, and shall also be liable to an action by, and in the name of the county treasurer, as for moneys had and received, for all moneys which may be in his hands after the expiration of his term of office, with interest thereon, from the time when the same ought to have been paid over.

Liability of superintendents for neglect to account, &c.

SEC. 29. The superintendents of the poor in each county shall present to the board of supervisors at their annual meeting in each year, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and the said supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as the other contingent expenses of the county; to be paid to the county treasurer, and by him to be kept as a separate fund, distinct from the other funds of the county.

Estimate of amount necessary for support of poor, and collection thereof.

SEC. 30. The accounts of the directors of the poor, and of justices of the peace, for any personal or official services rendered by them in relation to the poor, shall be audited and settled by the superintendents, and be paid on their order by the county treasurer; but no allowance shall be made to any officer for attending any board with accounts, for the purpose of having the same audited or paid.

Accounts of directors and justices, how audited and paid.

SEC. 31. It shall be the duty of the superintendents of the poor of each county, on or before the twentieth day of December in each year, to report to the secretary of state, in such form as he shall direct, the number of paupers that have been relieved or supported in such county the preceding year, the whole expense of such support, specifying the amount paid for the transportation of paupers, and any other items which do not constitute any part of the actual expense of maintaining such paupers, and the allowance made to superintendents, directors, justices, keepers and officers; the actual value of the labor of the paupers maintained, and the estimated amount saved in the expense of their support in consequence of their labor.

Annual report of superintendents.

SEC. 32. Any superintendent who shall neglect or refuse to make such report as aforesaid, or who shall wilfully make any false report, shall forfeit one hundred dollars; and the secretary of state shall give notice to the prosecuting attorney of the county, of every such neglect or refusal, or misconduct.

Penalty for neglect to make report, &c.

SEC. 33. The secretary of state shall annually lay before the legislature, during the first month of its session, an abstract of said report.

Duty of secretary of state.

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OF DISORDERLY PERSONS.

What persons
deemed disorder-
ly.

SECTION 1. All persons who threaten to run away and leave their wives and children a burden on the public; all persons pretending to tell fortunes, or where lost or stolen goods may be found; all common prostitutes and all keepers of bawdy houses, or houses for the resort of prostitutes; all drunkards, tiplers, gamesters, or other disorderly persons; all persons who have no visible calling or business to maintain themselves by, but who do for the most part support themselves by gaming; all jugglers, common showmen, and mountebanks, who exhibit or perform for profit any puppet show, wire or rope dancing, or other idle shows, arts, or feats; all persons who keep in any public highway, or in any public place, any gaming table, wheel of fortune, box, machine, instrument or device for the purpose of gaming; all persons who go about with such table, wheel or other machine, instrument or device, exhibiting tricks or gaming therewith; all persons who play in the public streets or highways, with cards, dice, or any instrument or device for gaming, shall be deemed disorderly persons.

Apprehension of
offenders, and se-
curity for good
behavior.

SEC. 2. Upon complaint made on oath to any justice of the peace, against any person as being disorderly, he shall issue his warrant for the apprehension of the offender, and cause him to be brought before such justice for examination; and if it shall appear by the confession of the offender, or by competent testimony, that he is a disorderly person, the justice may require of the offender a recognizance with sufficient sureties for his good behavior for the term of one year thereafter.

When record of
conviction to be
made, and offen-
der committed.

SEC. 3. In default of such sureties being found, the justice shall make up, sign and file in the county clerk's office, a record of conviction of such offender as a disorderly person, specifying generally the nature and circumstances of the offence, and shall by warrant under his hand, commit such offender to the common jail of the county, there to remain until such sureties be found, or such offender be discharged according to law.

What deemed a
breach of recog-
nizance.

SEC. 4. The committing of any of the acts which constitute the person so bound, a disorderly person, shall be deemed a breach of the condition of such recognizance.

When new secu-
rities may be re-
quired or offen-
der committed.

SEC. 5. Upon a recovery being had upon any such recognizance, the court before which such recovery shall be had, may in its discretion, either require new sureties for good behavior to be given, or may commit the offender to the common jail of the county, for any time not exceeding six months.

How person
committed may
be discharged.

SEC. 6. Any person committed to the common jail for not finding sureties for good behavior, may be discharged by any two justices of the peace of the county, upon giving such sureties for good behavior as were originally required from such offender.

Duty of jailer to
furnish list to
circuit court.

SEC. 7. It shall be the duty of the keeper of every jail, to lay before the circuit court for his county, on the first day of the term next after the commitment of any disorderly person to such jail, a list of the persons so committed and then in his custody, with the nature of their offences, the name of the justice committing them, and the time of their imprisonment.

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SEC. 8. The said court before which such list shall be laid, shall inquire into the circumstances of each case, and hear any proofs that may be offered, and shall examine the record of conviction, which shall be deemed presumptive evidence of the facts therein contained, until disproved.

Court to examine record, &c.

SEC. 9. The court may discharge such disorderly person from confinement, either absolutely or upon receiving sureties for his good behavior, in its discretion; or the said court may, in its discretion, authorize the superintendents of the poor of the county, to bind out such disorderly persons as shall be minors, in some lawful calling, as servants or apprentices, or otherwise, until they shall be of full age, respectively, or to contract for the services of such disorderly persons as shall be of full age, with any person, as laborers or servants, for any time not exceeding one year, which binding out and contracts shall be as valid and effectual as the indenture of any apprentice with his own consent and the consent of his parents, and shall subject the persons so bound out or contracted for, to the same control of their masters, respectively, and of such court, as if they were bound as apprentices.

Powers of court in relation to disorderly persons.

SEC. 10. Such court may in its discretion, order any such disorderly person to be kept in the common jail for any time not exceeding six months, at hard labor.

Court may order disorderly person kept at labor.

SEC. 11. If there be no means provided in such jail for employing offenders at hard labor, such court may direct the keeper thereof to furnish such employment as it shall specify, to such disorderly person as may be committed thereto, either by a justice, or any court, and for that purpose to purchase any necessary raw materials and implements, not exceeding such amount as the court shall prescribe, and to compel such persons to perform such work as shall be allotted to them.

When court may order keeper to furnish employment, &c.

SEC. 12. The expenses incurred in pursuance of such order, shall be paid to the keeper by the county treasurer, on the production of a certified copy of the order of the court, and an account of the materials furnished, verified by his oath.

Expenses, how paid.

SEC. 13. The keeper shall sell the produce of such labor, and shall account for the first cost of the materials furnished, and for one half of the surplus to the board of supervisors, and pay the same into the county treasury; and the other half of the surplus shall be paid to the person earning the same, on his discharge from imprisonment; and such keeper shall also account to the court, whenever required, for all materials purchased, and for the disposition of the proceeds of the earnings of such offenders.

Keeper to sell produce of labor, &c.

CHAPTER 40.

OF THE RACING OF ANIMALS.

SECTION 1. All running, trotting, or pacing of horses, or any other animals, for any bet or stakes, in money, goods or other valuable thing, or for any reward to be given to the owner or rider of any animal which shall excel in speed, excepting such as are by special laws

What deemed racing, and punishment therefor.

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for that purpose expressly allowed, shall be deemed racing within the meaning of this chapter, and are hereby declared to be common and public nuisances and misdemeanors; and all parties concerned therein, either as authors, betters, stakers, stake holders, judges to determine the speed of animals, riders, contrivers, or abettors thereof, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment, not exceeding one year, in the county jail.

Apprehension,
&c., of person
offending.

SEC. 2. Upon his own view of any person offending against the provisions of this chapter, as well as upon the testimony of others, any justice of the peace may issue his warrant for the immediate apprehension of the persons so offending, to the end that they may be compelled to enter into recognizances, with sufficient sureties for their good behavior, and for their appearance at the next circuit court for the county, to answer for the said offences.

Forfeiture for
making up purse
&c.

SEC. 3. Every person who shall contribute or collect any money, goods, or things in action, for the purpose of making up a purse, plate, or other valuable thing, to be raced for by any animal, contrary to law, shall forfeit the sum of twenty-five dollars for each offence.

Owner to forfeit
value of animal,
&c.

SEC. 4. The owner in whole or in part of any animal that shall be used or employed by his permission or privity, in racing, contrary to law, shall forfeit the value of the animal so used or employed; and every person who shall be concerned in laying any bet or wager upon the event of any illegal race, or in contributing to the stakes to be awarded upon any such event, shall forfeit the amount of the bet or wager so made, or of the sum or thing so contributed.

CHAPTER 41.

OF TAVERNS AND OTHER LICENSED HOUSES.

Forfeiture for
being inn-holder,
&c., without li-
cense.

SECTION 1. No person shall be an inn-holder or tavern keeper, common victualler, or seller of wine, brandy, rum, or other spirituous liquor, to be used in or about his house, or other building, unless he is first licensed as a tavern keeper, or common victualler, according to the provisions of this chapter, on pain of forfeiting one hundred dollars.

Selling liquor to
be used about
buildings without
license.

SEC. 2. If any person shall sell any wine or spirituous liquor, or mixed liquor, part of which is spirituous, to be used in or about his house or other building, without being duly licensed as a tavern keeper, or common victualler, he shall forfeit, for each offence, twenty-five dollars.

Retailing with-
out license.

SEC. 3. No person shall retail or sell any wine, brandy, rum, or other spirituous liquor, in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, unless he is first licensed as a retailer of wine and spirits, as provided in this chapter, on pain of forfeiting twenty-five dollars for each offence.

Retailer not to
sell liquor to be
used about
house, &c.

SEC. 4. If any person licensed to be a retailer, as aforesaid, and not licensed as a tavern keeper, or common victualler, shall sell any of the above mentioned liquors, either mixed or unmixed, to be

used in or about his house or other buildings, he shall forfeit for each offence the sum of twenty-five dollars.

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SEC. 5. Every tavern keeper shall, at all times, be furnished with suitable provisions and lodging for strangers and travelers, and with stable room, hay and provender, for their horses and cattle; and if he shall not at all times be so provided, the township board may revoke his license.

Tavern keeper to furnish provisions, &c.

SEC. 6. Every common victualler shall have all the rights and privileges, and be subject to all the duties and obligations of tavern keepers, excepting that he shall not be required to furnish lodging for travelers, nor stable room, hay and provender for horses and cattle.

Rights and obligations of common victuallers.

SEC. 7. Every tavern keeper and common victualler, shall at all times have a board or sign conspicuously affixed to his house, or in some conspicuous place near the same, with his name thereon, and the employment for which he is licensed, on pain of forfeiting ten dollars.

Sign.

SEC. 8. If any tavern keeper shall, when requested, refuse, without reasonable cause, to receive and make suitable provision for strangers and travelers, and their horses and cattle, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars, and shall also, by order of the court, be deprived of his license.

Penalty on tavern keeper for refusing to receive strangers, &c.

SEC. 9. No tavern keeper, or common victualler, shall have or keep in or about his house, or other buildings, yards or gardens, or their dependencies, any dice, cards, billiards, or other implements used in gaming; nor shall suffer any person resorting there, to use or exercise any of said games, or any other unlawful game or sport, within said premises, on pain of forfeiting ten dollars for each offence.

Implements of gaming not to be kept, nor gaming &c., permitted.

SEC. 10. Any person who shall use or exercise any of the games aforesaid, in or about any such house or building of a tavern keeper or common victualler, shall forfeit the sum of ten dollars.

Penalty for exercising games about taverns, &c.

SEC. 11. No tavern keeper or common victualler shall suffer any person to drink to drunkenness or excess in his premises, nor suffer any minor, travelers excepted, to have any strong drink there, on pain of forfeiting five dollars for each offence.

Drunkenness, &c.

SEC. 12. Every tavern keeper, common victualler, or other person who shall give, sell, or dispose of any spirituous liquor, wine, mixed liquor, or other intoxicating drink, to any male or female Indian, or to any common drunkard, shall forfeit for each offence the sum of twenty dollars.

Penalty for disposing of liquor to Indians.

1841, p. 137.

SEC. 13. If any tavern keeper or common victualler, shall trust or give credit exceeding seventy-five cents, to any person for liquor, he shall forfeit and lose all sums so trusted or credited, above the sum of seventy-five cents; and all actions brought therefor, shall be utterly barred, and the defendant in any such action may avail himself of the provisions of this section under the general issue.

Not to credit more than seventy-five cents.

SEC. 14. If any common victualler shall keep open his house, cellar, store, shop or place of business, on any part of the day or evening of the first day of the week, or on the evening of any other day of the week at a later hour than ten o'clock, and entertain any person therein by selling him any spirituous liquor, he shall forfeit, for each offence, the sum of ten dollars.

Common victuallers not to keep open house at certain times.

SEC. 15. When any person shall, by excessive drinking of spirituous liquors, so misspend, waste or lessen his estate, as thereby to ex-

Township board, &c., may prohibit sale of liquor to certain persons.

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pose either himself or his family to want or indigent circumstances, or the county to which he belongs, to expense for the maintenance of him or his family, the township board of the township in which such spendthrift lives shall, in writing under their hands, forbid all licensed tavern keepers, common victuallers and retailers of the same township, to sell him any spirituous or intoxicating liquors for the space of one year; and they may in like manner forbid the selling of any such liquors to such spendthrift, by the said licensed persons of any other township to which the said spendthrift may resort for the same; and the clerk of each incorporated city shall, under the direction of the mayor and aldermen thereof, issue a like prohibition as to any such spendthrift living in such city.

Renewal of prohibition.

SEC. 16. The said mayor and aldermen, and the said township board shall, in the same manner, from year to year, renew such prohibition, as to all such persons as have not, in their opinion, reformed within the year; and if any tavern keeper, common victualler, or retailer shall, during such prohibition, give, sell or dispose of, to any such prohibited person, or for his use, any such spirituous or intoxicating liquor, he shall forfeit for each offence, twenty dollars.

Penalty for procuring liquor for prohibited person.

SEC. 17. When said mayor and aldermen, or township board, in execution of the foregoing provisions, shall have prohibited the sale of spirituous liquors to any such spendthrift, if any person shall, with a knowledge of such prohibition, give or sell to, or purchase or procure for, or in behalf of such prohibited person, or for his use, any such spirituous or intoxicating liquors, he shall forfeit for each offence, the sum of twenty dollars.

Township board &c., may grant licenses; proviso.

SEC. 18. The township boards may severally license, for their respective townships, so many persons to be tavern keepers and retailers therein, as they shall think the public good may require; and the mayor, recorder and aldermen of each incorporated city, may, in like manner, license tavern keepers and retailers in their cities respectively: Provided, that no license for the sale of any intoxicating liquors shall be granted in any city, village or township, when a majority of the qualified voters thereof shall have voted at the next preceding township or charter election therein, against the granting of such licenses, as hereinafter provided.

1845, p. 56.

License, what to contain.

SEC. 19. Every license, either to a tavern keeper or retailer, shall contain a specification of the street, lane, alley or other place, and the number of the building, or some other particular description thereof, where such licensed person shall exercise his employment; and the license shall not protect any such person from the penalties provided in this chapter for exercising his employment in any other place than that which is specified in the license.

Licenses to common victuallers.

SEC. 20. The mayor, recorder and aldermen of each incorporated city, and the corporate boards of incorporated villages, may, unless prohibited as aforesaid, license for their cities and villages respectively, as many persons to be common victuallers, as they shall think the public good may require, and every such license shall contain such a specification or description as is required in the preceding section, of the street or other place, and of the building where the person so licensed shall exercise his employment; and the license shall not protect him from the penalties provided in this chapter for exercising it in any other place.

SEC. 21. The powers authorized to be exercised, and the duties

required to be performed by the provisions of this chapter, by the mayor, recorder and aldermen of each incorporated city, and the township board of each township, so far as relates to the licensing of retailers, and to the prohibition of the sale of spirituous liquors to spendthrifts, shall be exercised by the president and common council, or other corporate board of each incorporated village.

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Certain powers to be exercised by corporate board of villages.

SEC. 22. All licenses to tavern keepers, common victuallers and retailers, shall expire on the first Monday of April in each year, but any license may be granted or renewed at any time within thirty days next preceding that day, to take effect from the said first Monday of April, and after that day they may be granted for the remainder of the year, whenever the officers authorized to grant the same shall deem it expedient; but if application shall be made to a township board for any license, at any other time than at their annual meeting, the person applying therefor shall pay the members thereof for their services at the rate allowed by law.

Licenses, when to expire, and renewal thereof.

SEC. 23. Every person who shall be licensed as provided in this chapter, shall pay for such license to the clerk of the city, village or township in which he is licensed, and before such license shall be delivered to him or become operative, such sum as the officers granting the same shall determine; which sum shall not be less than five nor more than twenty dollars, and which money shall be paid over as directed in chapter thirty-eight for the benefit of the poor.

Payment for license, &c.

1842, p. 109 § 2.

SEC. 24. Any license to a tavern keeper, retailer or common victualler may, if the applicant require it, or if a license for the sale of intoxicating liquors shall be prohibited as aforesaid, be so framed as to authorize the licensed person to sell beer, ale, cider, or any other fermented liquors except wines, and not to authorize him to sell brandy, rum, or any other spirituous liquors or wines; in which case the sum to be paid for such license shall not be less than two nor more than eight dollars.

Licenses for sale of ale, beer, &c.

SEC. 25. If any person shall set up or keep, on or near his house, any sign, emblem, or insignia, intimating the same to be a tavern, or common victualling house, without having a license as provided in this chapter, he shall be subject to a fine of five dollars for each day on which the same shall be kept up.

Penalty for keeping up sign, &c., by person not licensed.

SEC. 26. No license shall be granted or renewed to any person, unless the officers granting the same shall be satisfied that the public good will be promoted thereby, and that the person applying is of good moral character.

When no license to be granted, &c.

SEC. 27. At each annual meeting or charter election for the election of officers in any township, city or village, the inspectors of elections therein shall furnish an additional box for the reception of ballots, which box shall be labeled with the word "Licenses," and shall be kept, and the ballots deposited therein shall be canvassed, and the result thereof declared and certified, in the same manner that the other ballot boxes are required to be kept, and the other votes cast at such election declared and certified.

Additional box to be furnished for reception of votes relating to licenses.

1845, p. 56.

SEC. 28. Each person qualified to vote for the officers to be elected at such election, may deliver to the inspectors, or one of them, a ballot having written or printed thereon the word "License," or the words "No License," which ballot shall be deposited in said box; and if it shall appear upon canvassing such ballots that a majority of them have thereon the words "No License," the officers of such

Votes in favor of and against licenses.

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When board to
grant license to
every applicant
of good moral
character.

township, city or village, shall be prohibited from granting any license for the sale of intoxicating liquors, during the year then next ensuing.

SEC. 29. If, upon such canvass, it should be ascertained that a majority of the votes thus cast were inscribed with the word "License," then the township, village, or city authorities, as the case may be, shall grant licenses for the sale of distilled and fermented liquors, and for taverns, inns, groceries and victualling houses, to every applicant of good moral character.

Who to sue for
penalties and
forfeitures.

SEC. 30. It shall be the duty of the supervisor of each township, and the corporate authorities of each city and village, to prosecute for all violations of the provisions of this chapter coming to his or their knowledge, or when complaint of any such violation shall be made by any legally qualified voter; and for every refusal or neglect of such supervisor or corporate authorities so to prosecute, he or they shall forfeit and pay the sum of twenty-five dollars.

How recovered
and appropriated
&c.

SEC. 31. All penalties and forfeitures imposed or prescribed in or by this chapter, may be recovered in an action of debt, and when prosecuted for by a supervisor, shall be so prosecuted in the name of such supervisor, for the use of the township where said act or acts shall have been violated; and such penalties and forfeitures when incurred for any acts done in any incorporated city or village, may be recovered by suit brought in the corporate name of the city or village in which the act was done whereby such penalty or forfeiture was incurred; and such suit may be instituted before any justice of the peace in the township, city or village in which such act was done, or in any adjoining township, city or village; and the net proceeds of all moneys recovered for a violation of any provision or provisions of this chapter, when collected by such township, city or village, shall be paid into the treasury of such township, city or village, and shall be appropriated to the support of common school libraries in such township, city or village. Any person, resident in such township, city or village, may institute a suit for any such penalty or forfeiture, in the name of such supervisor, city or village, in manner aforesaid, first giving security to the satisfaction of the justice of the peace before whom the suit shall be brought, for the payment of any costs which may be recovered against the plaintiff, and in such case the plaintiff named in the suit, shall not be liable to execution for any costs in such suit; and no suit shall be brought, nor shall any execution be issued against such plaintiff therefor.

Pleadings and
proofs.

SEC. 32. The declaration in any suit instituted to recover any penalty or penalties, forfeiture or forfeitures, incurred as aforesaid, may be in the following form, to wit:

"A. B. complains of C. D. and says, that said C. D. justly owes to him, the said A. B., the sum of one hundred dollars for certain penalties and forfeitures which the said C. D. has incurred and is justly liable to pay, by reason that said C. D. did, on the _____ day of _____ in the year _____, and at divers times between said day and the _____ day of _____ in the year _____, (which time shall not exceed thirty days,) at _____, (insert the township, city or village, in which the act was done,) in the county of _____, do and commit certain acts in violation of the laws of this state, touching the sale of wine and spirituous liquors, and therefore the said A. B. brings his suit." And the defendant may

plead thereto in the following form, to wit: "The said C. D. is not indebted to said A. B. as above alleged." And under such declaration, evidence may be given of any violation of any provision or provisions of this chapter, and under such plea the defendant may offer any competent testimony to show that he has not done or committed any such violation of the provisions of this chapter.

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CHAPTER 42.

OF THE MAINTENANCE OF ILLEGITIMATE CHILDREN.

SECTION 1. When any woman who has been delivered of a bastard child, or is pregnant with a child, which, if born alive, may be a bastard, shall make a complaint to any justice of the peace, and shall desire to institute a prosecution against the person whom she accuses of being the father of the child, the justice shall take her accusation and examination, in writing, under oath, respecting the person accused, the time when and place where the complainant was begotten with child, and such other circumstances as the said justice shall deem necessary, for the discovery of the truth of such accusation.

Complaint
against father of
bastard child,
and examination
thereon.

SEC. 2. The said justice may issue his warrant against the party accused, which may be executed in any part of this state, and after hearing him in his defence, may require him to enter into recognizance with one or more sureties to the satisfaction of the justice, in such sum as he may deem necessary, not less than one hundred nor more than five hundred dollars, upon condition to appear and answer to the said complaint at the next term of the circuit court for the county, and to abide the order of the court thereon, and may order him to be committed until he shall enter into such recognizance; and on the trial of the issue before the court, the examination taken as aforesaid shall be given in evidence.

Justice may
issue warrant,
proceedings
thereon

SEC. 3. If, at the next term of the said court, the complainant shall not have been delivered, or shall not be able personally to attend, or if there shall be any other sufficient reason therefor, the court may order a continuance of the cause, from time to time, as they shall judge necessary, and such recognizance shall remain in force until final judgment: Provided, that if the sureties in such recognizance shall, at any term of said court, object to being any longer held liable, or if the court shall, for any cause, deem it proper, such court may order the defendant to enter into a new recognizance, with such sureties, and for such amount as they shall direct; and he shall stand committed until such new recognizance shall be entered into.

Proceedings in
circuit court.

SEC. 4. Upon the trial of the cause, the woman making the complaint shall be admitted as a witness, unless she shall have been convicted of a crime which would by law render her incompetent as a witness in any other cause; and the issue to the jury shall be, whether the defendant is guilty or not guilty; and if the jury shall find him guilty, or if he shall admit the truth of the accusation, he shall be adjudged to be the father of such child, and shall stand chargeable with the maintenance thereof, with the assistance of the mother, in such manner as the court shall order.

Trial and judg-
ment.

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Bond to secure
performance of
order, &c.

SEC. 5. Such person so adjudged to be the father of such child, shall give bond to the superintendents of the poor of the county, with sufficient sureties to the satisfaction of the court, to perform such order, and also to indemnify the county, which might be chargeable with the maintenance of such child; and he may be committed to prison until he shall give such bond; but if on such trial he shall be found not guilty, the court shall order that he be discharged; and in either case, the judgment of the court shall be final.

Relief of person
imprisoned.

SEC. 6. Any man who shall have been imprisoned ninety days, for having failed to comply with the order of the circuit court, as provided in this chapter, shall have the benefit of the laws for the relief of poor prisoners committed on execution for debt, provided he shall procure the like notification of his intention to take the oath prescribed to poor debtors, to be served on the complainant if still living within this state, and also upon one of the said superintendents of the poor; such notification to be served at least thirty days before the time appointed for taking the oath.

Still liable to ac-
tion.

SEC. 7. The mother of such child, and the said county superintendents respectively, may at all times after the liberation of such prisoner on taking said oath, recover by action of debt or on the case, any sum of money which ought to have been paid to them respectively by him in pursuance of such order of the court.

When superin-
tendents to make
application for
examination.

SEC. 8. If any woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable to any county; or shall be pregnant of a child likely to be born a bastard and to become chargeable to any county; the superintendents of the poor of any county, or any of them, where such woman shall be, shall, upon application for aid in supporting such child by the mother thereof, apply to some justice of the peace of the same county to make inquiry into the facts and circumstances of the case.

Woman to be
examined, and
reputed father
apprehended.

SEC. 9. Such justice shall examine such woman on oath respecting the father of such child, the time when and the place where she was begotten with child, and such other circumstances as the justice may deem necessary for the discovery of the truth; and shall thereupon issue his warrant to apprehend the reputed father; and the same proceedings shall be thereupon had, as if complaint had been made by such woman, as prescribed in the foregoing provisions of this chapter, and with the like effect.

Warrant may be
executed in any
county.

SEC. 10. Any warrant issued for the apprehension of such reputed father, may be executed in any county in this state, in which the person against whom the same issued may be found.

Superintendents
may compromise
with father of
bastard.

SEC. 11. The superintendents of the poor of any county in this state shall have power to make such compromise and arrangement with the putative father of any bastard child in such county, relative to the support of such child, as they shall deem equitable and just, and thereupon may discharge such putative father from all liability for the support of such bastard.

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OF THE OBSERVANCE OF THE FIRST DAY OF THE WEEK, AND THE
PREVENTION AND PUNISHMENT OF IMMORALITY.

Observance of the First Day of the Week.

SECTION 1. No person shall keep open his shop, ware-house or workhouse, or shall do any manner of labor, business or work, except only works of necessity and charity, or be present at any dancing, or at any public diversion, show or entertainment, or take part in any sport, game or play, on the first day of the week; and every person so offending shall be punished by a fine not exceeding ten dollars for each offence.

Shops, &c., not to be kept open on first day of week, &c.

SEC. 2. No tavern keeper, retailer of spirituous liquors, or other person keeping a house of public entertainment, shall entertain any persons, not being travelers, strangers or lodgers in his house, on the said first day of the week, or shall suffer any such persons on said day to abide or remain in his house, or in the buildings, yards, or orchards or fields appertaining to the same, drinking or spending their time idly, or at play, or in doing any secular business.

Keepers of public houses not to entertain, except travelers, &c., on first day of week.

SEC. 3. Every person offending against any of the provisions of the last preceding section, shall be punished by a fine not exceeding five dollars for each person so entertained, or suffered so to abide or remain; and upon any conviction after the first, such offender shall be punished by a fine not exceeding ten dollars; and if convicted three times, he shall be afterwards incapable of holding a license; and every person so abiding or drinking shall be punished by a fine not exceeding five dollars.

Penalty for violating preceding section.

SEC. 4. No person shall be present at any game, sport, play or public diversion, or resort to any public assembly, excepting meetings for religious worship or moral instruction, or concerts of sacred music, upon the evening of the said first day of the week; and every person so offending shall be punished by a fine not exceeding five dollars for each offence.

Public diversions &c.

SEC. 5. No person shall serve or execute any civil process from midnight preceding, to midnight following the said first day of the week; but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Between what hours civil process not to be executed.

SEC. 6. If any person shall, on the said first day of the week, by rude and indecent behavior, or in any other way, intentionally interrupt or disturb any assembly of people met for the purpose of worshipping God, he shall be punished by a fine not less than two, nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days.

Disturbance of religious meetings.

SEC. 7. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties provided in this chapter, for performing secular business or labor on the said first day of the week, provided he disturb no other person.

Persons observing seventh day of week, not liable, &c.

SEC. 8. For the purposes of the provisions of this chapter, the said first day of the week shall be understood to include all the time between the midnight preceding and the midnight following the said

What time included in first day of the week.

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Limitation of
time for prosecution.

day ; and no prosecution for any fine or penalty incurred under any of the preceding provisions of this chapter, shall be commenced after the expiration of three months from the time when the offence shall have been committed.

Gaming.

Money, &c., lost
by betting, may
be recovered.

SEC. 9. If any person shall, by playing at cards, dice, or any other game, or by betting on the sides or hands of such as are gaming, or by any betting whatever, lose to any person so playing or betting, any sum of money, or any goods whatever, and shall pay and deliver the same, or any part thereof to the winner, the person so paying or delivering the same, may sue for and recover such money, in an action for money had and received to the use of the plaintiff, and such goods, in an action of replevin, or the value thereof in an action of trover, or in a special action on the case.

When winner
subject to fine.

SEC. 10. If the person so losing said money or goods, shall not, within three months after such loss, without covin or collusion, prosecute with effect for such money or goods, the winner to whom such money or goods shall have been so paid or delivered shall be subject to a fine not exceeding three times the value of such money or goods.

Oath of plaintiff
and defendant.

SEC. 11. In any suit to be brought by the person so losing any such money or goods, against the person receiving the same, when it shall appear from the declaration that the said money or goods came to the hands of the defendant by gaming, if the plaintiff shall make oath before the court in which such suit is pending, that the said money or goods were lost by gaming with the defendant as alleged in the declaration, judgment shall be rendered that the plaintiff recover damages to the amount of the said money or goods, unless the defendant will make oath that he did not obtain the same, or any part thereof by gaming with the plaintiff; and if he shall so discharge himself, he shall recover of the plaintiff his costs; but the plaintiff may, at his election, maintain and prosecute his action according to the usual course of proceeding in such actions at common law.

Forfeiture for
winning or losing
to value of five
dollars.

SEC. 12. Every person who shall win or lose, at any time or sitting, by gaming or betting on the hands or sides of such as are gaming, any money or goods, to the value of five dollars or more, whether the same be paid over or delivered, or not, shall forfeit and pay three times the value of such money or goods; provided that a prosecution shall be commenced therefor within six months after the committing of the offence.

Certain notes,
mortgages, &c.,
how far void.

SEC. 13. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration, shall be for any money or goods, won by playing at cards, dice, or any other game whatever, or by betting on the sides or hands of such as are gaming, or by any betting or gaming whatever, or for reimbursing or repaying any moneys knowingly lent or advanced for any gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except as to those who hold or claim under them in good faith, and without notice of the illegality of such contract or conveyance.

Lands in certain
cases to enure to
benefit of person
who would be
entitled if grant-
or, &c., were
dead.

SEC. 14. Whenever any mortgage or other conveyance of land shall be adjudged void under the provisions of the preceding section, such lands shall enure to the sole benefit of such person or persons as would be entitled thereto, if the mortgagor or grantor were naturally dead;

and all grants and conveyances for preventing such lands from coming to or devolving upon the person or persons to whose use and benefit the said lands would so enure, shall be deemed fraudulent and of no effect, except as against purchasers in good faith, and without notice of the illegality of such mortgage or other conveyance.

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SEC. 15. If any person shall keep, or knowingly suffer to be kept, in any house, building, yard, garden, or dependency thereof, by him actually used or occupied, any table for the purpose of playing at billiards for hire, gain or reward, or shall, for hire, gain or reward, suffer any person to resort to the same, for the purpose of playing at billiards, cards or dice, or any other unlawful game, every person so offending shall, for each and every such offence, forfeit a sum not exceeding one hundred dollars, and shall further recognize, with sufficient sureties, in such reasonable sum as the court shall direct, for his good behavior, and especially that he will not be guilty of any offence against the provisions of this chapter for the term of one year then next ensuing.

Penalty for keeping billiard table, or gaming house, &c.

SEC. 16. If any person shall keep, or knowingly suffer to be kept, in any house, building, yard, garden, or dependency thereof, or in any field, by him owned or occupied, any nine-pin alley, or any alley to be used in the playing of nine-pins, or any other like game, whether to be played with one or more balls, or with nine or any other number of pins, for hire, gain or reward, or shall, for hire, gain or reward, suffer any person to resort to the same for the purpose of playing at any such game, every such person so offending shall, for every such offence, forfeit a sum not exceeding fifty dollars, and shall further recognize for his good behavior, in like manner as is required of a person convicted of any offence mentioned in the preceding section.

Penalty for keeping nine-pin alley, &c.

SEC. 17. If any person shall play at billiards, cards, dice, nine-pins, or any other unlawful game, at any such table or alley, kept or used as mentioned in the two last preceding sections, he shall forfeit a sum not less than two dollars, nor more than ten dollars for each offence.

Penalty for playing in certain cases.

SEC. 18. If any person shall make oath before any justice of the peace, that he suspects, or has probable cause to suspect, that any house or other building is unlawfully used as and for a common gaming house, for the purpose of gaming for money or other property, and that idle and dissolute persons resort to the same for that purpose, such justice, whether the names of the persons last mentioned are known to the complainant or not, shall issue a warrant, commanding the sheriff or any constable to enter into such house or building, and there to arrest all persons who shall be there found playing for money, or otherwise, and also the keepers of the same, and to take into their custody all the implements of gaming there found, and to bring the said persons and implements before such justice to be dealt with according to law.

When warrant shall issue to arrest persons found playing in gaming house, &c.

CHAPTER 44.

OF THE LAW OF THE ROAD AND THE REGULATION OF PUBLIC CARRIAGES.

SECTION 1. Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, carts, sleds, sleighs,

Persons meeting with carriages, &c., to turn to the right.

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**Penalty, &c., for
violating prece-
ding section.**

or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the traveled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference.

SEC. 2. Every person offending against the provisions of the preceding section, shall for each offence forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offence: Provided, that proceedings shall be commenced for the recovery of such forfeiture within three months after the offence shall have been committed, and any action for such damages shall be commenced within one year after the cause of action shall have accrued.

**Penalty for em-
ploying driver
addicted to
drunkenness.**

SEC. 3. No person owning, or having the direction or control of any coach, or other carriage or vehicle running or traveling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such coach, carriage, or other vehicle, who is addicted to drunkenness, or to the excessive use of intoxicating liquors; and if any such person shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day for all the time during which he shall have kept such driver in such employment.

**Owner of coach,
&c., to discharge
driver, on notice
of his being in-
toxicated.**

SEC. 4. If any driver, whilst actually employed in driving such coach, carriage or vehicle, shall be guilty of intoxication, it shall be the duty of the owner or person having the charge or control of such coach, carriage, or other vehicle, on receiving written notice of the fact, signed by any passenger who witnessed the same, and certified by him under oath, forthwith to discharge such driver from such employment; and every person who shall retain, or have in such service, within six months after the receipt of such notice, any driver, who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for all the time during which he shall keep any such driver in such employment after receiving such notice.

**Driver running
horses, guilty of
misdemeanor,
&c.**

SEC. 5. No person driving any carriage or vehicle for the conveyance of passengers for hire upon any road or highway in this state, with or without passengers therein, shall run his horses, or cause or permit them to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both, at the discretion of the court.

**Penalty on driver
for leaving hor-
ses unfastened.**

SEC. 6. It shall not be lawful for the driver of any carriage used for the conveyance of passengers for hire, to leave the horses attached thereto, while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take the charge and guidance of them, so as to prevent their running; and if any such driver shall violate the provisions of this section, he shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offence.

**Owners of carri-
age liable for in-
juries done to
persons in their
employ.**

SEC. 7. The owners of every carriage running or traveling upon any turnpike road or public highway, for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the

employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable.

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CHAPTER 45.

OF THE FIRING OF WOODS AND PRAIRIES.

SECTION 1. Every person who shall wilfully or negligently set fire to any woods, prairies, or grounds, not his own property, or shall wilfully or negligently permit any fire to pass from his own woods, prairies, or grounds, to the injury or destruction of the property of any other person, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both, in the discretion of the court; and shall also be liable to the party injured in double the amount of damages sustained.

Wilfully setting fire to woods, &c., how punished.

SEC. 2. Whenever the woods and (*or*) prairies in any township shall be on fire, so as to endanger property, it shall be the duty of the justices of the peace, the supervisor, and the commissioners of highways of such township, and each of them, to order such, and so many of the inhabitants of such township, liable to work on the highways, and residing in the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress.

Duty of justices, &c., in extinguishing fires.

SEC. 3. If any person shall refuse or wilfully neglect to comply with such order, he shall forfeit a sum not less than five, nor more than fifty dollars.

Penalty for refusing compliance with the order.

CHAPTER 46.

OF TIMBER AND LUMBER FLOATING UPON WATERS, OR CARRIED UPON ADJOINING LANDS.

SECTION 1. Whenever any logs, timber, boards or planks, in rafts or otherwise, shall be drifted upon any island in any of the waters within this state, or upon the bank or shore of such waters, the owner of such logs, timber or lumber may, at any time within one year, remove the same, on paying or tendering to the owner or occupant of the land such reasonable damages as may have been caused by reason of such removal, and if the owner shall not, within the said year, make such payment or tender, and take such logs, timber or lumber from such lands, unless he and the owner or occupant of such lands shall

How owner of timber, &c., may reclaim the same, and consequence of neglect.

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CHAPTER 47.Penalty for de-
stroying marks
on timber, &c.

otherwise agree, the same shall be deemed the property of such owner or occupant of the lands.

SEC. 2. Whoever shall unlawfully cut out, alter or destroy, any mark of the owner, made on any logs, timber, or lumber, put into any lake, river, stream or pond, he shall forfeit a sum not exceeding ten dollars, for each log, stick of timber, or piece of lumber, the mark of which he shall have so altered, cut out or destroyed; and shall be liable to the party injured in three times the amount of damages.

Possession of
defendant when
presumptive evi-
dence of guilt.

SEC. 3. In any suit under the provisions of the preceding section, if such logs, timber or lumber, shall be found in the possession of the defendant, with the marks cut out, altered or destroyed, it shall be considered presumptive evidence of his guilt, and the burthen of proof shall be upon him to discharge himself.

Liability of per-
son converting
logs, &c.

SEC. 4. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards, or planks, floating in any of the waters of this state, or lying on the banks or shores of such waters, or on any island where the same may have drifted, except as in this chapter provided for, shall be liable to the owner thereof in treble the amount of damages.

CHAPTER 47.

OF LOST GOODS AND STRAY BEASTS.

Notice of finding
goods, &c., how
given.

SECTION 1. When any person shall find any lost money, or lost goods, if the owner thereof be known, he shall immediately give notice thereof to such owner; if the owner thereof be unknown, and such money or goods be of the value of three dollars or more, the finder shall, within two days, cause notice thereof to be posted in two public places within the township where the same were found; and shall also, within seven days, give notice thereof in writing to the township clerk of such township, and pay him twenty-five cents for making an entry thereof in a book to be kept for that purpose.

1b.

SEC. 2. If the money or goods so found be of the value of ten dollars or more, and the owner thereof be unknown, the finder thereof shall also, within one month after such finding, cause notice thereof to be advertised in some newspaper in the same county, if one be published there, and if not, then in some newspaper published in an adjoining county, and continued therein for six successive weeks.

Taking up stray
animals.

SEC. 3. It shall be lawful for any resident freeholder of any township in this state, to take up any stray horses, mules or asses, by him found going at large in such township, beyond the range where such horses, mules or asses usually run at large; and also to take up, between the months of November and March, any stray neat cattle, sheep or swine by him found going at large therein, beyond the range where such animals have usually run at large.

Notice to owner,
and entry on
township book,

SEC. 4. Such finder shall immediately give notice thereof to the owner of any such animal, if known to him; but if the owner thereof be unknown, such finder shall, within ten days, cause notice thereof to be entered with the township clerk, in such book as aforesaid,

containing a description of the color, age, and natural and artificial marks of such animals, as near as may be, and the name of such finder, and shall pay such clerk twenty-five cents for entering the same; and shall also cause such notice to be posted up in two of the most public places in such township.

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SEC. 5. If the owner of any such animal or animals shall not, within one month, appear and reclaim them, and such animal or animals taken up at the same time shall be of the value of ten dollars or more, the finder shall cause such notice to be published in a newspaper in the same county, if one be published there, and if not, then in a newspaper published in an adjoining county, and continued therein for six successive weeks.

When notice to be published in newspaper.

SEC. 6. Every finder of lost goods or stray animals, of the value of ten dollars or more, shall, within three months, and before any use shall be made thereof, procure an appraisal of the same to be made and certified by a justice of the peace of his township, which appraisal he shall, within said three months, cause to be filed with the township clerk; and he shall pay to such justice fifty cents for such appraisal and certificate, and six cents for each mile necessarily travelled by him in such service, and to the clerk six cents for filing the certificate.

Appraisal of lost goods and stray beasts.

SEC. 7. If the owner or person entitled to the possession of any such money or goods, other than stray animals, shall appear at any time within one year after such entry with the township clerk, and make out his rights thereto, he shall have restitution of the same, or of the value thereof, upon his paying all the costs and charges aforesaid, together with a reasonable compensation to the finder for keeping and taking care of the same, and for his necessary travel and expenses in the case; which charges shall, in case of disagreement between the owner and finder, be determined by some justice of the peace of the township, who shall certify the same.

When owner, &c., to have restitution.

SEC. 8. If no owner or person entitled to the possession of the same shall appear in one year, then such lost money or goods shall remain to the finder, he paying one half of the value thereof to the treasurer of the township, according to said appraisement, after deducting from such value all the fees and charges aforesaid, to be determined and certified by a justice of the peace as aforesaid; and upon the neglect or refusal to pay the said half of the value, the same shall be recovered by the township treasurer, in an action of debt or on the case.

When goods, &c., shall remain with finder, and township entitled to one-half of value.

SEC. 9. If the owner or person entitled to the possession of any such stray beast, shall appear within six months after such entry with the township clerk, and shall make out his right thereto, he shall have restitution of the same, upon paying all lawful charges as before provided in the case of lost goods.

When owner, &c., to have restitution of stray beasts.

SEC. 10. If such owner or person entitled to the possession of the same shall not appear and make out his title to the animals, within the said six months, such animals shall be sold at the request of the finder, by any constable of the township, at public auction, upon first giving notice thereof in writing, by posting up the same in three of the most public places in such township at least ten days before such sale, and the finder may bid therefor at such sale; and the moneys arising therefrom, after deducting all the lawful charges aforesaid, and the fees of the constable, which shall be the same as upon a sale on execution, shall be deposited in the treasury of the township.

Sale of stray beasts, and disposition of proceeds.

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When owner,
&c., to receive
moneys deposi-
ted with town-
ship treasurer.

Finder neglect-
ing to advertise,
&c., to lose bene-
fit of this chap-
ter.

Liability of per-
son unlawfully
taking stray ani-
mals.

When horses,
&c., may be mo-
derately worked
by finder.

Sec. 11. If the owner or person entitled to the possession of any such animal, shall appear within one year after the entry with the township clerk as aforesaid, and establish by his own affidavit or otherwise to the satisfaction of the township treasurer, his title thereto, he shall be entitled to receive the money so deposited in the township treasury, from the proceeds of the sale; and if no owner or person entitled to the possession of the same shall appear within the said year, such money shall belong to the township.

Sec. 12. If the finder of any lost money, goods, or stray beasts, shall neglect to cause the same to be entered, advertised, or notice thereof to be posted, as directed in this chapter, he shall be precluded from all the benefits of this chapter, and from all claim for keeping such goods or animals, or on account of any charges in relation thereto.

Sec. 13. If any person shall unlawfully take away any animal, taken up as a stray pursuant to the provisions of this chapter, without paying all the lawful charges incurred in relation to the same, he shall be liable to the finder thereof to the value of such animal, which may be recovered in an action of trespass or on the case.

Sec. 14. If any horses, mules or oxen, of sufficient age and strength, and used to work, shall be taken up under the provisions of this chapter as strays, and shall not be reclaimed by the owner within one month after the entry thereof with the township clerk, the person taking up the same may moderately and carefully work such horses, mules or oxen, within the township where they were so taken up; and the value of such labor shall be deducted from the charges aforesaid.

CHAPTER 48.

OF FIRE DEPARTMENTS IN CITIES AND VILLAGES.

Exemption of
firemen from mi-
litia duty, &c.

1843, p. 17,

Moneys may be
raised to com-
pensate firemen.

Payment of
compensation.

SECTION 1. Every person who was a fireman in any incorporated city or village in this state on the sixth day of February in the year one thousand eight hundred and forty-three, or at any time thereafter, and who shall have served, and shall continue to serve as such for the term of seven years from that time, or from the time of his appointment, if appointed since that time, and every person who may hereafter be appointed a fireman in any such city or village, and shall serve as such for the term of seven years, shall, during the time of such service, be exempted from serving as a juror in any of the courts of this state, and from the performance of all militia duty, and shall forever thereafter be exempted from the performance of all militia duty, except in cases of insurrection or invasion.

Sec. 2. It shall be lawful for the qualified voters of any such city or village, at their annual election of officers thereof, to authorize the common council or other corporate board of such city or village, to raise a sufficient sum to pay each fireman therein the sum of five dollars; and thereupon such sum shall be levied and collected, in the same manner as the other contingent expenses of such city or village are levied and collected.

Sec. 3. Upon such provision being made for the payment of fire-

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men, as provided in the preceding section, each fireman who shall produce a certificate from the foreman of his company, countersigned by the chief engineer of the fire department of such city or village, stating that he has well and faithfully performed his duties as such fireman during the year then next preceding, shall be allowed and paid out of the treasury of such city or village, the said sum of five dollars as a compensation for his services.

SEC. 4. The recorder or clerk of every such city or village, shall keep an accurate record, in a book to be provided for that purpose, of the name, occupation and residence of every fireman of such city or village, together with the date of his appointment, and a designation of the company to which he is attached; and whenever any fireman shall resign or be removed, it shall be so entered upon such record; and the appointment, resignation or removal, of every fireman, shall also be entered on the minutes of the common council or other corporate board.

Record to be kept by recorder or clerk.

SEC. 5. It shall be the duty of the recorder or clerk of such city or village, to deliver to every fireman who shall have served during the said term of seven years as provided in this chapter, a certificate to that effect, signed by himself and the mayor of such city, or president of such village; which certificate shall be received as evidence in any of the courts of this state.

Certificate of service.

SEC. 6. It shall be lawful for the common council or other corporate (*corporate*) board of each incorporated city or village, to levy and collect, by a tax upon all the taxable real and personal property within the limits thereof, in the manner prescribed in the charter of such city or village for the collection of taxes therein, such sums as may be necessary for the purchasing and repairing of fire engines and other fire apparatus, and for defraying all other necessary expenses of the fire department thereof.

Taxes for purchasing and repairing engines.

SEC. 7. Every fire company shall have power to make such by-laws, rules and regulations, not inconsistent with the laws of this state, for their government and discipline, and to prescribe such penalties for the violation thereof, not exceeding five dollars for any one offence, as they may deem necessary to the efficient accomplishment of the object of their organization; and they may sue for and collect such penalties in the name of the common council or other corporate board of the city or village to which they belong.

Fire companies may make by-laws, &c.

SEC. 8. All fire engines, and apparatus requisite for, and ordinarily used by fire companies in the extinguishment of fires, which are now owned, or which may hereafter be purchased and owned by any incorporated city or village, and kept for the use of any fire companies therein, and all waterworks, with the buildings, machinery and fixtures, and the ground occupied thereby, now owned, or which may hereafter be purchased and owned by any incorporated city or village, and used or intended to be used for the supplying of water for the extinguishment of fires and the use of the inhabitants, shall be, and are hereby exempted from levy or sale for any debt, damages, fine or amercement whatever.

Fire engines exempted from execution.

1843, p. 19, § 8,
1844, p. 76 § 1.

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CHAPTER 49.

OF CERTAIN MUNICIPAL REGULATIONS OF POLICE.

Theatrical Exhibitions and Public Shows.

Township board,
&c., may license
shows, and ex-
hibitions.

SECTION 1. The township board of any township, or the corporate board of any village, may at any meeting held for that purpose, license theatrical exhibitions, public shows, and such other exhibitions as they deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum, and to prevent any danger to the public peace; but no such license shall be in force for a longer time than the officers granting the same shall have been elected to office.

Punishment for
setting up shows
without license.

SEC. 2. Any person who shall set up or promote any such exhibition or show, or shall publish or advertise the same, or otherwise aid or assist therein, without a license first obtained, as provided in the preceding section, or contrary to the terms and conditions of such license, or while the same is suspended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

Gunpowder.

Inhabitants of
townships, &c.,
may make regu-
lations in rela-
tion to keeping
gun-powder.

SEC. 3. The inhabitants of every township or incorporated village may, at any regular meeting, order that no gunpowder shall be kept in any place within the limits of such township or village, unless the same shall be kept in tight casks or canisters; and that no gunpowder above the quantity of fifty pounds, shall be kept or deposited in any shop, store or other building, or in any ship or vessel, which shall be within the distance of twenty-five rods from any other building, or from any wharf; that no gunpowder above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store or other building, within ten rods of any other building; and that no gunpowder above the quantity of one pound, shall be kept or deposited in any shop, store or other building, within ten rods of any other building, unless the same shall be well secured in copper, tin or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers.

When search
warrant may be
issued.

SEC. 4. Upon complaint made on oath to any justice of the peace, by any township or village officer, that he has probable cause to suspect that gunpowder is deposited or kept within the limits of the township or village, contrary to any such order, such justice may issue his warrant, directed to any constable of such township, or the marshal of such village, ordering him to enter any shop, store or other building, or vessel specified in said warrant, and there to make diligent search for the gunpowder suspected to have been deposited or kept as aforesaid, and to make return of his doings to such justice forthwith.

Forfeiture for
violating two
preceding sec-
tions.

SEC. 5. If any person shall commit either of the offences mentioned in the two preceding sections, he shall forfeit a sum not exceeding twenty dollars; but the two preceding sections shall not extend to any manufactory of gunpowder, nor in any case prevent the trans-

portation thereof through any township, or from one part of any township to another part thereof.

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CHAPTER 50.**

Of Dogs.

SEC. 6. The inhabitants of any township or incorporated village, may make such by-laws concerning the licensing, regulating and restraining of dogs going at large, as they shall deem expedient, and may affix any penalties not exceeding ten dollars, for any breach thereof; but no such by-laws shall extend to any dog not owned or kept in such township, and no person shall be obliged to pay more than two dollars annually for any license granted under the provisions of this chapter.

Regulations relating to dogs.

SEC. 7. All money received for the several licenses mentioned in this chapter, shall be paid to the treasurer, for the use of the township or village, as the case may be.

Moneys received for licenses to be paid to treasurer.

SEC. 8. Every owner or keeper of any dog, shall be liable to any person injured by such dog, in double the amount of damages sustained by him, to be recovered in an action of trespass or on the case.

When owner, &c., liable in double damages.

SEC. 9. Any person may kill any dog that shall suddenly assault him, while he is peaceably walking or riding any where out of the enclosure of the owner or keeper of such dog; and any person may kill any dog that shall be found out of the enclosure or immediate care of the owner, wounding, worrying or killing any cattle, swine, sheep, lambs, or other animals, unless the same be done by the direction or permission of the owner of such cattle, swine, sheep, lambs or other animals, or which shall have been accustomed to strolling away from the owner or keeper thereof, and worrying or killing sheep or lambs, or doing other injury.

When any person may kill dog.

CHAPTER 50.

OF UNAUTHORIZED BANKING, AND CERTAIN NOTES OR EVIDENCES OF DEBT ISSUED BY BANKS.

SECTION 1. No person unauthorized by law, shall subscribe to, or become a member, or in any way interested in any association or company formed for the purpose of issuing notes or other evidences of debt, to be loaned or put in circulation as money; nor shall any person, unauthorized by law, subscribe to, or become in any way interested in any bank or fund created or to be created for the like purposes, or either of them.

Persons unauthorized by law not to be interested in certain associations.

SEC. 2. Whoever shall subscribe to, or become a member of any such company, or be interested in any such bank or fund, shall forfeit one hundred dollars.

Penalty for subscribing, &c.

SEC. 3. No incorporated company, without being expressly thereunto authorized by law, shall employ any part of its effects, or be in any way interested in any fund that shall be employed for the purpose of receiving deposits, making discounts or issuing notes or other evidences of debt, to be loaned or put in circulation as money; and any director, officer, or agent of any incorporated company, who shall violate any provision of this section, shall forfeit one thousand dollars.

Penalty on directors, &c., of company for unlawful banking.

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Notes, &c., given
to unauthorized
company, to be
void.

SEC. 4. All notes and other securities for the payment of any money, or the delivery of any property, made or given to any association, institution or company, that shall be formed for any such unlawful purpose as aforesaid, or made or given to secure the payment of any money loaned or discounted by any incorporated company or its officers, contrary to the provisions of the preceding section, shall be void.

Penalty for issu-
ing bills, &c., to
circulate as mo-
ney, without ex-
press authority.

SEC. 5. No person, association, or body corporate, whether public or private, except such bodies corporate as are or shall be expressly authorized by law to do a regular banking business, and to issue bank bills, shall issue any bills, notes, due-bills, drafts, or other evidences of debt, to be loaned or put in circulation as money, or to pass or be used as a currency or circulating medium; and every person, and every corporation, and every member of such corporation, who shall violate the provisions of this section, shall forfeit one thousand dollars, and any such corporation shall thereby forfeit all its corporate rights and privileges.

1842, p. 27, § 1.

Penalty for sign-
ing certain bills.

SEC. 6. No corporation authorized by its charter to do a banking business, and to issue bank bills, shall make such bills payable in any thing but specie; or at any other place than its banking house, or office, as located by its charter; or not payable on demand; and every such corporation which shall violate any of the preceding provisions of this section, shall thereby forfeit all its chartered rights and privileges; and every person who shall sign any such bills as president, cashier or otherwise of such corporation, shall forfeit a sum not less than five hundred dollars, nor more than one thousand dollars.

1842, p. 28, § 2.

Penalty for cir-
culating certain
bills.

SEC. 7. No person shall pay, give or receive in payment, or in any way circulate or attempt to circulate any bank bill, promissory note, or other evidence of debt, issued by any banking company, or by any other corporation, within this state, or elsewhere, which shall purport to be for the payment of a less sum than one dollar, or which shall be made payable otherwise than in specie on demand; and every person who shall violate any of the provisions of this section, shall for each offence forfeit a sum not exceeding fifty dollars, but no prosecution shall be commenced therefor, after the expiration of three months from the time of committing the offence.

CHAPTER 51.

OF THE DESTRUCTION OF WOLVES AND OTHER NOXIOUS ANIMALS.

Bounty for kil-
ling wolves, &c.

SECTION 1. Every person, being an inhabitant of this state, who shall kill a full grown wolf, or a wolf's whelp, in any organized township in this state, shall be entitled to a bounty of eight dollars for each wolf over three months old, and four dollars for each wolf's whelp under the age of three months, to be allowed and paid in the manner hereinafter provided.

Wolf or wolf's
head, &c., to be
taken to justice.

SEC. 2. Every person intending to apply for such bounty, shall take such wolf or wolf's whelp killed by him, or the head thereof, with the ears and skin entire thereon, to one of the justices of the peace of the township within which such wolf or whelp shall have been taken,

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who shall thereupon associate with him another justice, or an assessor, or commissioner of highways of such township, to act with him in deciding upon such application.

Examination of applicant.

SEC. 3. The person claiming such bounty shall then be sworn by such justice, and state on oath the time and place, when and where every wolf and wolf's whelp, for which a bounty is claimed by him, was taken and killed; and he shall also submit to such further examination on oath, concerning the taking and killing of such wolf or whelp, as the justice and officer associated with him may require, and the statement made by him shall be reduced to writing in the form of an affidavit, which shall be subscribed by the person making it.

When certificate to be given.

SEC. 4. If it shall appear to the justice and officer associated with him, that the wolf or whelp was taken and killed within such township by the person applying for such bounty, and that the mother of any such whelp was not taken before she brought forth the same, they shall cut off and burn to ashes, the ears and scalp of such wolf or whelp, and deliver to the person so applying a certificate of the facts, and whether the same was over or under the age of three months when taken, annexing thereto the original affidavit made and subscribed by such person.

Certificate to be delivered to supervisor.

SEC. 5. Such certificate, with the affidavit annexed, shall, within fifteen days after the date thereof, be delivered to one of the supervisors of the same county; and if such supervisor shall doubt the correctness of the certificate or affidavit, he shall give notice to the person claiming the bounty, to give further evidence of the correctness thereof, and shall retain the papers in his hands until such further proof shall be made.

Certificate to be laid before board of supervisors, &c.

SEC. 6. If such supervisor shall have no doubt as to the correctness of such certificate and affidavit, or if his doubts shall be removed by further proof, he shall lay such certificate and affidavit before the board of supervisors at their next meeting, and if the board shall be satisfied that such certificate and affidavit are just and correct, they shall award to the person to whom such certificate shall have been granted, the bounty above specified, and shall cause the certificate and affidavit to be filed with their clerk.

Duplicate certificates of bounties to be delivered to treasurer, and bounties paid.

SEC. 7. Duplicate certificates, stating all the bounties that shall have been allowed by the board at any meeting, shall be made under their direction, and after being signed by their chairman and clerk, shall be delivered to the county treasurer, who shall thereupon pay to the several persons named in such certificate, out of any moneys in the treasury for defraying the contingent expenses of the county, the bounties to them respectively allowed.

One-half of bounties to be charged to state treasurer, &c.

SEC. 8. The county treasurer shall charge to the treasurer of the state, the one-half of all the bounties allowed by the board of supervisors, and shall transmit an account thereof to the auditor general, accompanied by one of the duplicate certificates, received from the board of supervisors; and shall also procure and transmit with such account, a certified copy of the original certificates and affidavits filed with the clerk of the board of supervisors, upon which the bounties mentioned in such account shall have been allowed.

Auditor general to examine accounts, &c., proceeds thereon.

SEC. 9. The auditor general shall examine every account so transmitted to him, and if he shall discover any defect or irregularity, which shall induce him to believe the same ought not to be allowed, he may suspend, in whole or in part, as he may think proper, the pay-

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ment of such account, until satisfactory proof be made to him, by affidavit or otherwise, of the justice of such account; and if the further proofs produced to him shall not be satisfactory, he shall reject such portion of the account as shall have been suspended, and his decision thereon shall be final and conclusive.

Sums audited to be paid out of state treasury.

SEC. 10. Every sum audited and allowed by the auditor general, upon any such account, not exceeding the one half of the bounties allowed by the board of supervisors, shall be paid out of the treasury of the state, to the treasurer of the county from which such account was transmitted.

Additional bounties.

SEC. 11. The boards of supervisors of the several counties of this state, shall have power, at the expense of their respective counties, to award and allow such other and further bounties for the destruction of wolves, wolf whelps, and such bounties for the destruction of panthers and other noxious animals within their respective counties, as they may think proper; and the same proof shall be required in such case, as is hereinbefore prescribed, and such additional and other bounties, when duly allowed and certified, shall be paid out of the county treasury.

Giving false certificate, a misdemeanor.

SEC. 12. If any justice of the peace, or other officer, who shall be applied to for a certificate under the provisions of this chapter, shall wilfully give a false certificate in the premises, such justice or other officer shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year.

TITLE X.

TITLE X.
CHAPTER 52

OF CORPORATIONS.

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- Chapter 52. Of Religious Societies.
 Chapter 53. Of Libraries and Lyceums.
 Chapter 54. Of Burying Grounds.
 Chapter 55. General Provisions relating to Corporations.
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CHAPTER 52.

OF RELIGIOUS SOCIETIES.

SECTION 1. It shall be lawful for all persons of full age, belonging to any church, congregation or religious society not already incorporated, to assemble at the church, or meeting house, or other place where they statedly attend for divine worship, and by a plurality of votes to elect any number of discreet persons of their church, congregation or society, not less than three nor more than nine in number, as trustees to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof.

Persons belonging to religious societies may elect trustees.

SEC. 2. It shall be lawful for any such church, congregation or religious society to choose their minister to be the president of the said corporation, and of their meetings, by a vote as aforesaid; and at the election provided for in this chapter, every person of full age, who has statedly worshiped with such church, congregation or society, and has been formerly considered as belonging thereto, shall be entitled to a vote.

Presidents of corporations, who entitled to vote.

SEC. 3. The minister of such congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen thereof, and for the want of such officers, any other person being a member or stated hearer in such church, congregation or society, shall publicly notify the congregation of the time when, and the place where the said election shall be held, at least fifteen days before the day of election; and such notification shall be given for two successive sabbaths, on which such church, congregation or society shall statedly meet for public worship, preceding the election.

Notifying elections.

SEC. 4. Any two of the elders, deacons, church wardens or vestrymen of such church, congregation or society, or, if such officers shall not be present, then any two voters present, to be nominated by a majority of the voters, shall preside at such election, receive the votes and determine the qualification of voters; and they shall, immediately after the election, certify under their hands and seals, the names of the persons elected to serve as trustees; in which certificate, the name by which the said trustees and their successors in office shall forever

Who to preside, certificate.

**TITLE X.
CHAPTER 55.**

Certificate to be
acknowledged
and recorded.

thereafter be called and known, shall be particularly mentioned and specified.

SEC. 5. Such certificate shall be acknowledged by the person (*persons*) making the same, or proved by a subscribing witness thereto before some officer authorized to take the acknowledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the clerk of the county within which the church or place of worship of such congregation shall be situated, in a book to be provided by him for that purpose, who shall be entitled to receive seventy-five cents for such recording; and thereafter such trustees and their successors shall be a body corporate by the name expressed in such certificate.

Powers of trustees.

SEC. 6. Such trustees may have a common seal, and may alter the same at pleasure, and they may take into their possession and custody all the temporalities of such church, congregation or society, whether the same shall consist of real or personal estate, and whether the same may have been given, granted or devised, directly or indirectly so such church, congregation or society, or to any other person or persons for their use.

1b.

SEC. 7. Such trustees may also, in their corporate name, sue and be sued in all courts and places, and they may recover and hold, all the debts, demands, rights and privileges, all churches, buildings, burying places, and all the estate and appurtenances belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in the said trustees; and they may hold other real or personal estate, and demise, lease and improve the same; but the whole of such estate, real and personal, shall not exceed the yearly value or income of three thousand dollars.

1b.

SEC. 8. The said trustees shall also have authority to alter and repair their churches and meeting houses, and under the direction of the society or congregation, to erect churches and meeting houses, and dwelling houses for their ministers, and other buildings for the use of their church, congregation or society.

1b.

SEC. 9. They shall also have authority to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all moneys belonging thereto, and to order and regulate the renting of pews or slips in their churches and meeting houses, and the perquisites for the breaking of the ground in the cemetery or church yard, and in the said churches and meeting houses, for burying the dead.

Appointment of
clerk and treasurer.

SEC. 10. They may appoint a clerk and treasurer of their board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure; and such clerk shall enter all rules and orders made by such trustees, and payments ordered by them, in a book to be procured by them for that purpose.

Two trustees
may call meeting.

SEC. 11. Any two of the trustees may at any time call a meeting of the trustees; and a majority of them being lawfully convened, shall be competent to do and perform all matters and things which such trustees are authorized to do and perform.

Classification of
trustees.

SEC. 12. The said trustees shall hold their offices for three years;

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and immediately after their first election, as hereinbefore provided, the said trustees shall be divided by lot into three classes, numbered one, two, and three; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, and of the third class at the end of the third year, to the end that as near as may be, one-third part of the whole number of trustees may be annually chosen.

SEC. 13. It shall be the duty of the clerk of said trustees, at least one month before the expiration of the office of any of the said trustees, to notify the same in writing to the minister, or in case of his death or absence, to the elders or church wardens, and if there be no elders or church wardens, then to the deacons or vestrymen of any such church, congregation or society, specifying in such notice the names of the trustees whose office will expire; and the minister, or other officers receiving such notice shall, in manner aforesaid, notify the members of such church, congregation or society of such vacancies, and appoint the time and place for the election to supply the same.

Notice of expiration of term of trustee, and of election of successor.

SEC. 14. Such election shall be held at least six days before vacancies shall happen as aforesaid, and all such subsequent elections shall be held and conducted by the same persons, and in the same manner as hereinbefore provided for the first election; and in case any vacancy shall happen by the death of a trustee, his refusal to act, or removal from the society before his term of office expires, or otherwise, notice thereof shall be given as aforesaid, and an election shall be held, and another trustee chosen in his stead for the remainder of such term.

Conducting election and filling vacancies.

SEC. 15. No person belonging to any such church, congregation or society, incorporated under the provisions of this chapter, shall be entitled to vote at any election after the first, until he shall have been an attendant on public worship in such church, congregation or society, at least six months before such election, and shall have contributed to the support of such church, congregation or society, according to the usages and customs thereof.

Qualification of voters, after first election.

SEC. 16. The clerk of the trustees shall keep a register of the names of all such persons as shall desire to become stated hearers in the said church, congregation or society, and shall therein note the time when such request was made, and the said clerk shall attend all subsequent elections, in order to test the qualifications of such voters, in case they shall be questioned.

Clerk to keep register of stated hearers.

SEC. 17. Nothing in this chapter contained, shall be construed to give to such trustees the power to fix or ascertain the salary or compensation to be paid to any minister, but the same shall be ascertained and fixed by a majority of such society entitled to vote at the election of trustees.

Majority of society to fix compensation of minister.

SEC. 18. It shall be lawful for the circuit court for the county in which any such religious corporation shall have been constituted, on the application of such corporation, if such court shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom, to such uses as the said corporation, with the approbation of said court, shall conceive to be for the interest of such corporation.

When circuit court may order sale of property.

SEC. 19. At least thirty days previous notice of any such application to the circuit court shall be given, by publishing the same in

Notice of application for order.

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Churches, &c.,
heretofore incor-
porated.

some newspaper published in the county, if one be there published, and if not, by posting up notices in three or more public places in such county.

SEC. 20. Every church, congregation or religious society, heretofore incorporated in pursuance of law, and not since dissolved, shall be, and is hereby established and confirmed; and in case of the dissolution of any such corporation, or of any corporation hereafter to be formed in pursuance of the provisions of this chapter, for any cause whatever, the same may be incorporated under the provisions of this chapter, at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, shall vest in such corporations as if there had been no such dissolution.

Land, &c., con-
veyed to trustees

SEC. 21. All lands, tenements and hereditaments, that have been or may hereafter be lawfully conveyed by devise, gift, grant, purchase or otherwise, to any persons as trustees, in trust for the use of any religious society organized, or which may hereafter be organized within this state, either for a meeting house, burying ground, or for the residence of a preacher, shall descend, with the improvements, in perpetual succession to, and shall be held by such trustees, in trust for such society.

Appointment of
trustees in cer-
tain cases.

SEC. 22. Whenever by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed by any minister, presiding elder, or other officer or officers of such church or denomination, it shall be the duty of such minister, presiding elder, or other officer or officers, to give to such trustees a certificate of their appointment, under the hand and seal of the person making the same, specifying the name by which such trustees and their successors shall forever thereafter be called and known, which certificate shall be acknowledged or proved and recorded as hereinbefore directed, whereupon such trustees and their successors appointed in the same manner, shall be a body corporate, by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted according to the provisions of this chapter.

1840, p. 16, &c.

When minister,
deacons, &c., to
be trustees, &c.

SEC. 23. Whenever by the constitution, rules and usages of any particular church or religious denomination, the minister or ministers, elders and deacons, or other officers, elected by any church or congregation, according to such constitution, rules or usages, are thereby constituted the trustees of such church or congregation, it shall be lawful for such minister or ministers, elders and deacons, or other officers, to assemble together, and execute under their hands and seals a certificate, stating therein the name by which they and their successors in office shall forever thereafter be called and known, which certificate shall be acknowledged or proved and recorded as hereinbefore directed; whereupon such persons and their successors in office, shall be a body corporate by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations, constituted according to the provisions of this chapter.

1841, p. 79.

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CHAPTER 53.

OF LIBRARIES AND LYCEUMS.

SECTION 1. Any seven or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of enlarging, regulating and using such library; and for that purpose any justice of the peace may, on the application of five or more of the proprietors, issue his warrant to one of them, directing him to call a meeting of the proprietors at the time and place expressed in the warrant, for the purpose of forming such corporation, and such meeting shall be called by posting up a notice containing the substance of such warrant, in at least two public places in the township where such library is kept, at least seven days before the time of meeting.

Meeting of proprietors to form corporations, how called.

SEC. 2. Any seven or more of the proprietors of such library, met in pursuance of such notice, may choose a president, a clerk, a librarian, collector, treasurer, and such other officers as they may deem necessary; and they may also determine upon the mode of calling future meetings of the proprietors; and the proceedings of such first meeting, containing a specification of the corporate name adopted by such proprietors, shall be certified by the clerk of such corporation, and recorded by the county clerk of the county within which the same is formed, who shall be entitled to receive seventy-five cents for recording the same.

Proprietors may choose officers.

SEC. 3. When such proprietors shall be organized as a corporation in the manner hereinbefore provided, they shall have all the powers and privileges, and be subject to all the duties of a corporation, according to the provisions of chapter fifty-five, so far as such provisions shall be applicable in such case, and not inconsistent with the provisions of this chapter.

Powers and privileges of corporation.

SEC. 4. The treasurer and collector shall give bond to such corporation, with sufficient sureties, to the satisfaction of the president, for the faithful discharge of their duties.

Bond of collector and treasurer.

SEC. 5. The said proprietors may raise such sums of money, by assessment on the shares, as they shall judge necessary for the purpose of preserving, enlarging and using the library; and the shares may be transferred according to such regulations as they may prescribe, and such corporation may hold real and personal estate to any amount not exceeding five thousand dollars, in addition to the value of their books.

Certain powers of corporation.

Of Lyceums.

SEC. 6. Any fifteen or more persons, in any township or county within this state, who shall, by writing, associate for the purpose of mental improvement, and the promotion of education, may form themselves into a corporation by the name of "The Lyceum of _____," (the name of the place where the meetings of the corporation are to be holden,) by calling their first meeting and being organized in like manner as is provided in this chapter, in the case of library corporations, and every lyceum, upon becoming a corporation as aforesaid, shall have, during the pleasure of the legislature, all the like rights, powers and privileges, as the proprietors of such libraries, and may hold real and personal estate, not exceeding six thousand dollars.

Lyceums, how organized, &c.

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CHAPTER 54.

OF BURYING GROUNDS.

Joint proprietors of land may form corporation **SECTION 1.** Any five or more persons of full age, who have or may become joint owners of any parcel of land for the purpose of a burying ground for the dead, may form themselves into a corporation by such name as they shall adopt, for the purpose of fencing, improving, ornamenting, and keeping the same in a suitable condition, in the manner hereinafter provided.

1840, p. 155, &c.

Proceedings to organize.

SEC. 2. Upon the application of any three of such proprietors to any justice of the peace of the county in which such ground is situated, he shall issue his warrant to one of such proprietors, directing him to call a meeting of the proprietors at the time and place, and for the purpose expressed in the warrant, and such meeting shall be called in obedience to such warrant, by posting up a notice thereof, containing the substance of the warrant, in at least two public places in the township, city or village in which such ground is situated, at least seven days before the time of holding such meeting.

Choosing officers.

SEC. 3. Any five or more of such proprietors who shall meet in pursuance of such notice, may choose a president, clerk, collector, treasurer, sexton, and such other officers as they may determine to be necessary, and may also provide for the manner of calling future meetings.

Certificate to be made and recorded.

SEC. 4. Such clerk shall make out a certificate of the organization of such corporation, specifying the corporate name thereof, the officers chosen at such meeting, and the description of the ground belonging to such corporation; which certificate shall be signed and acknowledged by the president and clerk of such corporation, and recorded in the office of the county clerk, who shall be entitled to receive seventy-five cents for recording the same.

Powers and privileges of corporations.

SEC. 5. When such proprietors shall be organized as a corporation in the manner hereinbefore provided, they shall have all the powers and privileges, and be subject to all the duties and liabilities of a corporation, according to the provisions of chapter fifty-five, so far as such provisions shall be applicable in such case, and not inconsistent with the provisions of this chapter.

Treasurer and collector to give bond.

SEC. 6. The treasurer and collector shall give bonds to the corporation, with sufficient sureties to the satisfaction of the president, for the faithful discharge of their duties.

Certain powers/ of corporation.

SEC. 7. The said proprietors may raise such sums of money by assessment on the shares, as they shall judge necessary for fencing, improving, ornamenting and keeping such ground, and the shares may be transferred according to such regulations as they may prescribe; and such corporation may hold so much real and personal estate as shall be necessary for the purposes contemplated in this chapter, and no more.

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CHAPTER 55.

GENERAL PROVISIONS RELATING TO CORPORATIONS.

SECTION 1. All corporations shall, when no other provision is specially made, be capable, in their corporate name to sue and be sued, appear, prosecute and defend all actions and causes to final judgment and execution, in any courts or elsewhere; to have a common seal which they may alter at pleasure; to elect in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation, and define their duties and obligations; and to make by-laws and regulations consistent with the laws of the state, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

Corporations may sue and be sued, elect officers, and make by-laws.

SEC. 2. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members respectively to one or more votes; the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; and they may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case twenty dollars, for any one offence; but no such by-laws shall be made by any corporation, repugnant to the provisions of its charter.

Nature of by-laws.

SEC. 3. The first meetings of all corporations, unless otherwise provided for in their acts of incorporation, shall be called by a notice signed by one or more of the persons named in the act of incorporation, setting forth the time, place and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation shall be established, or if no newspaper be published in the county, then in some newspaper published in an adjoining county.

Notice of meetings.

SEC. 4. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on a written application of three or more of the members thereof, issue a warrant to either of the said members, directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

Ib.

SEC. 5. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

When notice unnecessary.

SEC. 6. The members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Members may fill vacancies, &c.

SEC. 7. Every such corporation may hold land to an amount authorized by law, and may convey the same; and whenever the capital

Corporation may hold and convey land, and transfer shares.

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stock of any such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificates thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation, as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

Corporation to continue three years after dissolution, for certain purposes.

SEC. 8. All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

When franchise, &c., may be sold on execution.

SEC. 9. When any judgment shall be recovered against any turnpike or other corporation, authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, together with all their corporate property, both real and personal, may be taken on execution, and sold at public auction.

Notice of sale on execution.

SEC. 10. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days, at least, before the day of sale of the franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notice thereof in any township in which the clerk, treasurer, or any one of the directors of such corporation may dwell, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of the aforesaid officers may dwell, if any such there be, and if no newspaper be published in any such county, then in the state paper.

Adjournment of sale.

SEC. 11. The officer who may levy any execution, as prescribed in the preceding section, may adjourn the sale from time to time as may be necessary, until the sale shall be completed.

Who considered highest bidder.

SEC. 12. In the sale of the franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses thereon, and shall agree to take such franchise for the shortest period of time, and to receive during that time all such toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

Officer's return, and rights of purchaser's.

SEC. 13. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to such corporation, so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll-houses and gates belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive all the toll which may accrue during the time limited by the terms of his purchase, in the same manner, and under the same regulations, as such corporation was before authorized to demand and receive the same.

SEC. 14. Any person who may have purchased, or shall hereafter purchase under the provisions of this chapter, the franchise of any turnpike or other corporation, and the assignees of such purchaser, may recover in an action on the case, any penalties imposed by law, for an injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover during the time limited in the said purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

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Purchaser may recover penalties.

SEC. 15. The corporation whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers, and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures, as before such sale.

Powers and duties of corporation after sale of franchise.

SEC. 16. Such corporation may, at any time within three months after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may have received; and upon such payment or tender, the said franchise, and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

Franchise, how redeemed.

SEC. 17. Whenever any damages may have been, or may hereafter be assessed in favor of any person, for any injury sustained in his property by the doings of any such turnpike or other corporation authorized to receive toll or pay for the transportation of persons or property, and the said damages shall remain unpaid for the space of thirty days after such assessment, such person may have a warrant of distress against such corporation, for the damages assessed, together with interest thereon, and his reasonable costs, and the same proceeding shall be had thereon, and with the same effect, as upon an execution issued upon a judgment against such corporation.

How damages may be recovered in certain cases.

SEC. 18. All the proceedings aforesaid respecting the levy of executions and warrants of distress, may be had in any county in which either the creditor, or the president, or any director, or the treasurer or clerk of the corporation may reside, or in which such corporation has personal or real estate.

Where proceedings on execution, &c., may be had.

SEC. 19. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debts or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties.

When contribution may be enforced in chancery.

SEC. 20. Every act of incorporation passed since the twentieth day of April, in the year one thousand eight hundred and thirty-nine, or which shall be hereafter passed, shall, at any time, be subject to amendment, alteration or repeal, at the pleasure of the legislature: Provided, that no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

What acts of incorporation may be, altered or repealed.

1839, p. 218, § 11.

SEC. 21. It shall be the duty of the clerk of every corporation within this state, whose capital stock is or shall be subject to taxation for county or township purposes, and if there be no such clerk, then of the directors of such corporation, annually, between the fifteenth day of March and the first day of April, to make returns in person or by

Returns to supervisors.

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mail, to the supervisor of each township, and the assessors of each ward or district in any city in this state, in which any shareholder in such corporation shall reside; which return shall state the name of each owner residing in such township or city, the number of shares belonging to each on the fifteenth day of March of that year, and the par value of such shares.

Forfeiture for neglect.

SEC. 22. If any clerk or director mentioned in the preceding section, shall refuse or neglect to make such return, or shall wilfully make a false return, he shall forfeit the sum of fifty dollars.

Forfeiture for transferring shares fraudulently.

SEC. 23. If any shareholder shall fraudulently transfer any share in either of the corporations mentioned in the twenty-third (*twenty-first*) section of this chapter, for the purpose of avoiding taxation, he shall forfeit a sum equal to one-half the par value of the shares so transferred.

Returns to state treasurer.

SEC. 24. The cashier of each bank, and the secretary or clerk of each incorporated railroad, canal or turnpike company shall, on the first Monday of October in each year, or within fifteen days previous thereto, make a return to the state treasurer, verified by his oath, stating the amount of capital stock of such bank or railroad, canal or turnpike company then actually paid in, and in default thereof, the whole capital stock mentioned in the act of incorporation of such bank or company shall, for the purpose of computing the state tax payable by such bank or company, be deemed to have been paid in.

Examination of banks and other corporations.

SEC. 25. It shall be the duty of the attorney general, whenever and as often as shall be required by the governor, to examine into the affairs and condition of any bank or banks, or other corporations in this state, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney general shall have power to administer all necessary oaths to the directors and officers of any such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such bank, or pertaining to its affairs and condition; and the legislature, or either branch thereof shall have full power to examine into the affairs and condition of any bank or other corporation in this state, at all times; and for that purpose any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers and stockholders of such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents, by summary process to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe.

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TITLE XI.
CHAPTER 56.

OF PUBLIC INSTRUCTION.

Chapter 56. Of the Superintendent of Public Instruction.

Chapter 57. Of the University and its Branches.

Chapter 58. Of Primary Schools.

CHAPTER 56.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1. It shall be the duty of the superintendent of public instruction to submit to the legislature an annual report, exhibiting the condition of the university and branches, and of the primary schools, and all such other matters relating to his office and the public schools as he may think proper to communicate.

Superintendent to submit annual report to legislature—what to contain.
Const. art. 10, § 1.

SEC. 2. He shall prepare and cause to be printed with the laws relating to primary schools, all necessary forms and regulations for conducting all proceedings under said laws, and transmit the same, with such instructions relative to the organization and government of the public schools, and the course of studies proper to be pursued therein, as he may deem advisable, to the several officers entrusted with their management and care.

Superintendent to cause primary school laws, with forms, &c. to be transmitted.

SEC. 3. Such laws, forms and instructions, shall be printed by the person having the contract for the state printing, in pamphlet form, with a proper index; and shall also have annexed thereto, a list of such school books as the superintendent shall think best adapted to the use of the primary schools, and a list of books containing not less than two hundred volumes suitable for township libraries, with such rules as he may think proper to recommend for the government of such libraries.

Laws, &c., to be printed by printer to the state, with list of books &c., annexed.

1843, p. 109.

SEC. 4. The superintendent shall apply the income of the university fund to the payment of such debts as shall accrue from the operation of the laws relating to the establishment and support of the university, and shall apportion the income of the primary school fund among the several townships and cities of the state, in proportion to the number in each between the ages of four and eighteen years, as the same shall appear by the reports of the several county clerks made to him for the school year last closed.

Application of income of university and primary school funds.

SEC. 5. He shall prepare, annually, a statement of the amount payable to the university from the income of the university fund, and also of the amount in the aggregate payable to each county in the state from the income of the primary school fund, and shall deliver the same to the auditor general, who shall thereupon draw his warrant

Superintendent to prepare annual statement of amount payable to the university, and amount payable to counties from income of

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school fund; au-
ditor general to
draw warrant
upon state treas-
urer.

Superintendent
to send notice to
county clerks.

Salary of super-
intendent.

Interest to be
computed on
certain sums
paid into state
treasury.

1845, p. 148.

upon the state treasurer in favor of the treasurer of the university, for the amount payable to the university, and shall also draw his warrant upon said state treasurer, in favor of the treasurer of each county, for the amount payable to such county.

Sec. 6. The said superintendent shall also send written notices to the clerks of the several counties, of the amount in the aggregate to be disbursed in their respective counties, and the amount payable to the townships therein respectively, which notices shall be disposed of as directed in chapter fifty-eight.

Sec. 7. The superintendent shall receive for his services the sum of five hundred dollars per annum, payable quarter yearly out of the state treasury.

Sec. 8. Upon all sums paid into the state treasury on account of the principal of the university or primary school funds, except where other provision is or shall be made by law, the treasurer shall compute interest from the time of such payment, or from the time of the last computation of interest thereon, to the first Monday of April, in each and every year, and shall give credit therefor to the university or primary school interest fund, as the case may be, and such interest shall be paid out of the general fund.

CHAPTER 57.

OF THE UNIVERSITY AND ITS BRANCHES.

Name and style.

Object.

Regents, how
appointed.

How classed, and
vacancies sup-
plied.

Ex-officio mem-
bers—secretary.

Governor to be
president.

SECTION 1. There shall be established in this state an institution under the name and style of "The University of Michigan."

Sec. 2. The object of the university shall be, to provide the inhabitants of this state with the means of acquiring a thorough knowledge of the various branches of literature, science and the arts.

Sec. 3. The government of the university shall be vested in a board of regents, to consist of twelve members, who shall be nominated by the governor, and appointed by and with the advice and consent of the senate.

Sec. 4. Classes numbered one, two, three and four, as determined by the board at its first meeting, shall hold their offices one, two, three and four years respectively, from the time of their appointment. From and after the first of January, one thousand eight hundred and thirty-eight, three shall be appointed annually to supply the vacancies made by the provisions of this section, and in the manner provided, for in the preceding section, who shall hold their offices four years respectively.

Sec. 5. The governor, lieutenant governor, judges of the supreme court and chancellor of the state, shall be ex-officio members of said board; a secretary shall be appointed by said board, whose duty it shall be to record all the proceedings of the board, and carefully preserve all its books and papers.

Sec. 6. The governor of this state shall be the president of the board of regents, and in his absence the board may appoint a president pro tem.

SEC. 7. The regents appointed pursuant to the third section of this chapter, and their successors in office, shall constitute a body corporate, with the name and title of "The Regents of the University of Michigan," with the right, as such, of suing and being sued, of making and using a common seal, and altering the same at pleasure.

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CHAPTER 57.

Regents to be a
body corporate.

SEC. 8. The regents shall have power, and it shall be their duty, to enact laws for the government of the university, to elect a chancellor, and appoint the prescribed number of professors, and the requisite number of tutors; also to determine the amount of their respective salaries, and appoint a steward and fix the amount of his salary.

Regents to enact
laws.

SEC. 9. The university shall consist of three departments:

Departments.

1. The department of literature, science and the arts:
2. The department of law:
3. The department of medicine.

In the several departments there shall be established the following professorships: In the department of literature, science and the arts; one of ancient languages, one of modern languages, one of rhetoric and oratory, one of philosophy of history and logic, one of philosophy of the human mind, one of moral philosophy, one of natural theology and history of all religions, one of political economy, one of mathematics, one of natural philosophy, one of chemistry, one of geology and mineralogy, one of botany and zoology, one of fine arts, one of civil engineering and drawing. In the department of law; one of international law, one of common law and equity, one of constitutional and statute law, one of commercial and maritime law, and one of jurisprudence. In the department of medicine; one of anatomy, one of surgery, one of pathology and physiology, one of practice of physic, one of obstetrics and the diseases of women and children, one of materia medica and pharmacy and medical jurisprudence: Provided, that in the first organization of the university, the regents shall so arrange the professorships as to appoint such a number only as the wants of the institution shall require, and to increase them from time to time as the income of the fund shall warrant, and the public interest demand: Provided always, that no new professorships shall be established without the consent of the legislature.

Professorships.

SEC. 10. The immediate government of the several departments shall be entrusted to their respective faculties; but the regents shall have power to regulate the course of instruction, and prescribe, under the advice of the professorships, the books and authorities to be used in the several departments; and also to confer such degrees, and to grant such diplomas, as are usually conferred and granted by other universities.

Government of
departments.

SEC. 11. The regents shall have power to remove any professor or tutor, or other officers connected with the institution, when in their judgment the interest of the university shall require it.

Power to remove
officers.

SEC. 12. The board of regents shall appoint a secretary, librarian, and treasurer, who shall hold their offices during the pleasure of the board. The treasurer shall give such bonds as the regents may direct, for the faithful performance of the duties of his office, and shall keep a true and faithful account of all moneys received and paid out.

Officers.

SEC. 13. The fee of admission to the university shall never exceed ten dollars, and it shall be open to all persons resident in this state who may wish to avail themselves of its advantages, without charge of tuition, under the regulations prescribed by the regents; and all

Admission fee—
and who entitled
to advantages of
institution.



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Admission fees,
&c., to be paid to
treasurer.
How appropri-
ated.

Board of visitors,
how appointed—
their duties.

Regents to make
annual exhibit of
affairs of univer-
sity—what to
contain.

Regents to cause
buildings to be
erected.

Regents to ex-
pend moneys for
apparatus, &c.

Regents to estab-
lish branches.
and make rules.

Department
for educa-
tion of females,
and department
for education of
teachers.

In one of branch-
es agricultural
department to be
established.

Moneys to be ap-
propriated for
support of pro-
fessors, &c., in
branches.

others under such restrictions and regulations as said regents shall prescribe.

SEC. 14. The moneys thus received shall go into the hands of the treasurer, and so much of such moneys as are needed for the purpose, shall be expended by the regents in keeping the university buildings in good condition and repair, and the balance be appropriated for the increase of the library.

SEC. 15. A board of visitors, to consist of five persons, shall be appointed annually by the superintendent of public instruction, whose duty it shall be to make a personal examination into the state of the university in all its departments, and report the result to the superintendent, suggesting such improvements as they may deem important; which report shall be transmitted to the legislature at its next session.

SEC. 16. It shall also be the duty of the regents to make an exhibit of the affairs of the university in each year to the superintendent of public instruction, setting forth the condition of the university, the amount of expenditures, the number of professors and tutors, and the salaries of each, the number of students in the several departments, and in the different classes, the books of instruction used, and such other information as the superintendent may require, together with an estimate of the expenses for the ensuing year.

SEC. 17. As soon as the state shall provide funds for that purpose, the board of regents shall proceed to the erection of the necessary buildings for the university, on the ground designated by the legislature, and in such manner as shall be prescribed by law.

SEC. 18. The board of regents shall have authority to expend so much of the interest arising from the university fund, as may be necessary for the purchase of philosophical and other apparatus, a library and cabinet of natural history.

SEC. 19. It shall be the duty of the board of regents, together with the superintendent of public instruction, to establish branches of the university in the different parts of this state; also to establish all needful rules and regulations for the government of such branches: Provided always, that nothing in this chapter shall be so construed as to grant to any such branch the right of conferring degrees; and that said branches so to be established shall not be more than one in any one organized county of the state.

SEC. 20. In connexion with every such branch of the university, there shall be established an institution for the education of females in the higher branches of knowledge, whenever such suitable buildings shall be prepared, to be under the same general direction and management as the branch with which it is connected: whenever such branches shall be formed, there shall also be established in each, a department especially appropriated to the education of teachers for the primary schools, and such other departments as the regents shall judge necessary to promote the public welfare.

SEC. 21. In one at least of the branches of the university, there shall be a department of agriculture, with competent instructors in the theory of agriculture, including vegetable physiology and agricultural chemistry, and experimental and practical farming and agriculture.

SEC. 22. Whenever the branches of such university, or any of them, shall be established as hereinbefore provided, there shall be apportioned to each such sums for the support of its professors and

teachers, and also such other sums for the purchase of books and apparatus as the state of the university fund shall warrant and allow.

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Sec. 23. Meetings of the board may be called in such manner as the regents shall prescribe; and seven of them so assembled shall constitute a quorum for the transaction of business, and a less number may adjourn from time to time.

Meetings of board, and quorum for business.

Sec. 24. The board of regents are hereby authorized and required, on or before the first Monday in January, one thousand eight hundred and thirty-nine, to procure the best and most appropriate plan for the university buildings; which plan, if approved of by the governor and superintendent of public instruction, shall be adopted by the regents of the university.

Plan of buildings to be procured by 1839, &c.

CHAPTER 58.

OF PRIMARY SCHOOLS.

Districts.

SECTION 1. Whenever the board of school inspectors of any township shall form a school district therein, it shall be the duty of the clerk of such board to deliver to a taxable inhabitant of such district, a notice in writing, of the formation of such district, describing its boundaries, and specifying the time and place of the first meeting, which notice, with the fact of such delivery, shall be entered upon record by the clerk.

When new district is formed, township clerk to deliver notice to taxable inhabitant. 1843, p. 88, &c.

Sec. 2. The said notice shall also direct such inhabitant to notify every qualified voter of such district, either personally or by leaving a written notice at his place of residence, of the time and place of said meeting, at least five days before the time appointed therefor; and it shall be the duty of such inhabitant to notify the qualified voters of said district accordingly.

Inhabitant to serve notice.

Sec. 3. The said inhabitant, when he shall have notified the qualified voters as required in such notice, shall endorse thereon a return, showing such notification, with the date or dates thereof, and deliver such notice and return to the chairman of the meeting.

Return of no. t.co.

Sec. 4. The said chairman shall deliver such notice and return to the director chosen at such meeting, who shall record the same at length in a book to be provided by him at the expense of the district, as a part of the records of such district.

Notice and return to be recorded.

Sec. 5. The qualified voters of such district, when assembled pursuant to such previous notice, and also at each annual meeting, shall choose a moderator, director, and assessor; who shall within ten days after such meeting, severally file with the director, a written acceptance of the offices to which they shall have been respectively elected, which shall be recorded by said director.

Election of officers, &c.

Sec. 6. Every such school district shall be deemed duly organized, when any two of the officers elected at the first meeting, shall have filed their acceptance as aforesaid.

When district deemed organized.

Sec. 7. In case the inhabitants of any district shall fail to organize the same in pursuance of such notice as aforesaid, the said clerk shall

New notice in case of failure to organize.

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Corporate powers of districts.

give a new notice in the manner hereinbefore provided, and the same proceedings shall be had thereon as if no previous notice had been delivered.

SEC. 8. Every school district organized in pursuance of this chapter, or which has been organized and continued under any previous law of the state or territory of Michigan, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of "School District number (such number as shall be designated in the formation thereof by the inspectors) of ,," (the name of the township or townships in which the district is situated,) and in that name shall be capable of suing and being sued, and of holding such real and personal estate as is authorized to be purchased by the provisions of this chapter, and of selling the same.

Director's record evidence.

SEC. 9. The record made by the director, as required in the fourth section of this chapter, shall be prima facie evidence of the facts therein set forth, and of the legality of all proceedings in the organization of the district prior to the first district meeting; but nothing in this section contained shall be so construed as to impair the effect of the record kept by the school inspectors, as evidence.

Presumption of legal organization.

SEC. 10. Every school district shall, in all cases, be presumed to have been legally organized, when it shall have exercised the franchises and privileges of a district for the term of two years.

District Meetings.

Annual meeting.

SEC. 11. The annual meeting of such (*each*) school district shall be held on the last Monday of September in each year, and the school year shall commence on that day.

Special meeting.

SEC. 12. Special meetings may be called by the district board, or by any one of them, on the written request of any five legal voters of the district, by giving the notice required in the next succeeding section, and in all notices of special meetings the object of the meeting shall be stated.

Notice of meetings.

SEC. 13. All notices of annual or special district meetings, after the first meeting has been held as aforesaid, shall specify the day, and hour, and place of meeting, and shall be given at least six days previous to such meeting, by posting up copies thereof in three of the most public places in the district; and in case of any special meeting called for the purpose of establishing or changing the site of a school house, such notice shall be given at least ten days previous thereto.

When meeting not illegal for want of notice.

SEC. 14. No district meeting shall be deemed illegal for want of due notice, unless it shall appear that the omission to give such notice was wilful and fraudulent.

Who entitled to vote.

SEC. 15. Every white male inhabitant of the age of twenty-one years, residing in the district, and liable to pay a school district tax therein, shall be entitled to vote at any district meeting, and all persons who are entitled by the laws of this state to vote at township and county elections, and residing in said district, shall be entitled to vote on all questions arising in said district, excepting when the raising of money by tax is in question, and all such persons shall be eligible to any office in such school district.

Challenges.

SEC. 16. If any person offering to vote at a school district meeting shall be challenged as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall declare to the person

challenged the qualifications of a voter, and if such person shall state that he is qualified, and the challenge shall not be withdrawn, the said chairman shall tender to him an oath in substance as follows: "You do swear (or affirm) that you are twenty-one years of age, that you are an actual resident of this school district, and liable to pay a school district tax therein;" and every person taking such oath, shall be permitted to vote on all questions proposed at such meeting.

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SEC. 17. If any person so challenged, shall refuse to take such oath, his vote shall be rejected, and any person who shall wilfully take a false oath, or make a false affirmation under the provisions of the preceding section, shall be deemed guilty of perjury. False oath to be deemed perjury.

SEC. 18. When any question is taken in any other manner than by ballot, a challenge immediately after the vote has been taken, shall be deemed to be made when offering to vote, and treated in the same manner. When challenge may be made in certain cases.

SEC. 19. The qualified voters in such school district, when lawfully assembled, shall have power to adjourn from time to time as may be necessary; to designate a site for a school house by a vote of two-thirds of those present, and to change the same by a similar vote, at any regular meeting. Powers of voters.

SEC. 20. When no site can be established by such inhabitants as aforesaid, the school inspectors of the township or townships in which the district is situated, shall determine where such site shall be, and their determination shall be certified to the director of the district, and shall be final, subject to alteration afterwards by the inspectors only, if necessary. When inspectors to determine site of school house.

SEC. 21. The said qualified voters shall also have power at any such meeting, to direct the purchasing or leasing of an appropriate site, and the building, hiring or purchasing of a school house, and to impose such tax as may be sufficient for the payment thereof, subject to the limitation contained in the succeeding section. Voters may direct the purchasing, &c., of a school house, and impose tax.

SEC. 22. The amount of taxes to be raised in any district for the purpose of purchasing or building a school house, shall not exceed the sum of two hundred dollars in any one year, unless there shall be more than thirty scholars residing therein, between the ages of five and eighteen years; and the amount thereof shall not exceed three hundred dollars in any one year, unless there shall be more than fifty scholars residing in the district between the ages last aforesaid; and no sum shall be raised exceeding one hundred and eighty dollars for the purpose of building or purchasing a school house of less dimensions than twenty-four feet by thirty feet, and ten feet between floors; nor exceeding seventy-five dollars for the purpose of building or purchasing a school house, constructed of round or hewn logs. Limitation of tax for school-house, &c.

SEC. 23. Such qualified voters when assembled as aforesaid, may from time to time impose such tax as shall be necessary to keep their school house in repair, and to provide the necessary appendages, and to pay and discharge any debts or liabilities, of the district lawfully incurred; and in districts containing more than fifty scholars between the ages of four and eighteen years, may raise a sum not exceeding twenty dollars in any one year for globes, outline maps, or any apparatus for the purpose of illustrating the principles of agricultural chemistry or the mechanic arts. Tax for repairs, &c.

SEC. 24. They may also determine, at each annual meeting, the length of time a school shall be taught in their district during the en-

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Voters may determine the length of time a school shall be taught, &c.

When district board may determine.

When voters may direct sale of property.

Directions in regard to suits.

suing year, which shall not be less than three months; and whether by male or female teachers, or both; and whether the moneys apportioned for the support of the school therein shall be applied to the winter or summer term, or a certain portion of each.

Sec. 25. In case any of the matters in the preceding section mentioned, are not determined at the annual meeting, the district board shall have power, and it shall be their duty, to determine the same.

Sec. 26. Said qualified voters may also, at any regular meeting, authorize and direct the sale of any school house, site, building or other property belonging to the district, when the same shall no longer be needed for the use of the district.

Sec. 27. They may also give such directions, and make such provision as they shall deem necessary, in relation to the prosecution or defence of any suit or proceeding in which the district may be a party or interested.

District Officers, their Powers and Duties.

District officers.

Sec. 28. The officers of each school district shall be a moderator, director and assessor, who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors shall have been chosen, and filed their acceptance, but not beyond ten days after the time of a second annual meeting after their election or appointment, without being again elected or appointed.

Moderator.

Moderator's powers and duties.

Sec. 29. The moderator shall have power, and it shall be his duty, to preside at all meetings of the district, to sign all warrants for the collection of rate bills after they shall have been prepared and signed by the director, and to countersign all orders upon the assessor for moneys to be disbursed by the district, and all warrants of the director upon the township treasurer for moneys raised for district purposes, or apportioned to the district by the township clerk; but if the moderator shall be absent from any district meeting, the qualified voters present may elect a suitable person to preside at the meeting.

Moderator to keep order, &c.

Sec. 30. If at any district meeting, any person shall conduct himself in a disorderly manner, and after notice from the moderator or person presiding, shall persist therein, the moderator or person presiding may order him to withdraw from the meeting, and on his refusal, may order any constable or other person or persons to take him into custody until the meeting shall be adjourned.

Penalty for disturbing meeting.

Sec. 31. Any person who shall refuse to withdraw from such meeting on being so ordered as provided in the preceding section, or who shall wilfully disturb such meeting, shall, for every such offence, forfeit a sum not exceeding twenty dollars.

Assessor.

Assessor to collect and pay over moneys.

Sec. 32. The assessor shall pay over all moneys in his hands belonging to the district, on the warrant of the director, countersigned by the moderator; and shall collect all rate bills for tuition and fuel, in obedience to the command contained in the warrant annexed thereto.

On refusal to pay, assessor to collect by distress.

Sec. 33. In case any person shall neglect or refuse to pay the amount on such rate bill for which he is liable, on demand, the assessor shall collect the same by distress and sale of any goods or

chattels of such person, wherever found within any county in which the district, or any part of it, is situated.

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SEC. 34. The assessor shall give at least ten days' notice of such sale, by posting up written notices thereof in three public places in the township where such property shall be sold.

Notice of sale.

SEC. 35. At the expiration of his warrant, the assessor shall make a return thereof, in writing, with the rate bill attached, to the director; stating the amount on said rate bill collected, the amount uncollected, and the names of the persons from whom collections have not been made.

Assessor to make return to director.

SEC. 36. The assessor shall appear for and on behalf of the district, in all suits brought by or against the same, when no other directions shall be given by the qualified voters in district meeting, except in suits in which he is interested adversely to the district, and in all such cases the director shall appear for such district, if no other direction be given as aforesaid.

When assessor to appear for district.

Director.

SEC. 37. The director shall be the clerk of the district board, and of all district meetings when present, but if he shall not be present at any district meeting, the qualified voters present may appoint a clerk of such meeting, who shall certify the proceedings thereof to the director to be recorded by him.

Director to be clerk.

SEC. 38. The director shall record all the proceedings of the district, in a book to be kept for that purpose, and preserve copies of all reports made to the school inspectors, and safely preserve and keep all books and papers belonging to his office.

To record proceedings, &c.

SEC. 39. By and with the advice and consent of the moderator and assessor, or one of them, the director shall contract with and hire qualified teachers for, and in the name of the district, which contract shall be in writing, and shall have the consent of the moderator and assessor, or one of them endorsed thereon, and shall specify the wages per week or month as agreed by the parties, and a duplicate thereof shall be filed in his office.

To contract with teachers.

SEC. 40. He shall ascertain, as near as practicable, before the commencement of each school term, the just proportion which each person having scholars to send to the school, ought to furnish of the fuel for such term, and give each such person at least five days' notice of the time within which he is required to deliver the same at the school house, and if any person shall not deliver his proportion as required, the same shall be furnished by the director, and the amount thereof shall be assessed on the rate bill, to the person neglecting to deliver his proportion as aforesaid.

To apportion fuel.

SEC. 41. Within ten days next previous to the annual district meeting, the director shall take the census of his district, and make a list in writing of the names of all the children belonging thereto between the ages of four and eighteen years.

To take census of district, and make list.

SEC. 42. He shall furnish a copy of such list to each teacher employed in the district, and require such teacher carefully to note the daily attendance of each scholar, and to make return thereof to him, including the ages of all scholars whose names are not on such list; and such teacher shall also certify and return, according to his best information and belief, the name of the person liable for the tuition of each scholar.

To furnish copy of list to teacher, and require teacher to note attendance and make return.

SEC. 43. In case the director shall not have furnished such list as

When teacher to keep list, &c.

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aforesaid, the teacher shall keep a list of all the scholars attending school, and the number of days each scholar shall attend the same, with the age of each, and the name of the person liable for the tuition of each, according to his best information and belief, which list he shall return to the director as aforesaid.

Director to ascertain amount due for tuition.

SEC. 44. The director shall ascertain from the return of such teacher, the number of days for which each person not exempted shall be liable to pay for tuition, and the amount payable by each.

Rate bill for tuition and fuel, and warrant for collection.

SEC. 45. Within twenty days after receiving such list and certificate from the teacher, the director shall make out a rate bill, containing the name of each person so liable, and the amount due from him for tuition and fuel, or either, adding thereto five cents on each dollar of the sum due, for assessor's fees, and shall annex thereto a warrant for the collection thereof, to be signed by him and the moderator.

Contents of warrant.

SEC. 46. Such warrant shall command the assessor that within sixty days he collect of the persons named in said rate bill the amount set opposite their respective names, and that if any person shall neglect or refuse, on demand, to pay the amount on said rate bill for which he is liable, he collect the same by distress and sale of the goods and chattels of such person wherever found within the county or counties in which the district is situated, first publishing such sale at least ten days by posting up notices thereof in three public places in the township where such property shall be sold.

Renewal of warrant.

SEC. 47. In case the moderator and director shall deem it necessary, they may, by an endorsement on such warrant signed by them, extend the time therein specified for the collection of such rate bill, not exceeding thirty days.

Director to provide appendages, &c., and keep account.

SEC. 48. The director shall provide the necessary appendages for the school house, and keep the same in good condition and repair during the time a school shall be taught therein, and shall keep an accurate account of all expenses incurred by him as director.

Allowance of director's account.

SEC. 49. He shall present said account for allowance to the qualified voters of the district, at a regular meeting, and the amount of such account, as allowed by such meeting, shall be assessed and collected in the same manner as other district taxes; but no such account shall be allowed at a special meeting, unless the intention to present the same shall be expressed in the notice of such meeting.

Director to give notice of meetings.

SEC. 50. He shall give the prescribed notice of the annual district meeting, and of all such special meetings as he shall be required to give notice of in accordance with the provisions of this chapter, one copy of which for each meeting shall be posted on the outer door of the district school house, if there be one.

To draw books from township library, and return the same.

SEC. 51. The director shall draw from the township library, the proportion of books to which his district may be entitled, and return the same to the township library at the expiration of three months, and shall continue to draw books in like manner, at the expiration of every three months, and to return the same as aforesaid.

Distribution of books.

SEC. 52. He shall distribute the books drawn out by him to the parents or guardians of the children of the district of the proper age, for the time and under the restrictions contained in the rules prescribed by the board of school inspectors.

Director to draw and sign warrants on treasurer.

SEC. 53. He shall draw and sign all orders upon the assessor for all moneys to be disbursed by the district, and all warrants upon the township treasurer for moneys raised for district purposes, or appor-

tioned to the district by the township clerk, and present the same to the moderator to be countersigned by him.

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SEC. 54. The director shall also, at the end of each school year, deliver to the township clerk to be filed in his office, a report to the board of school inspectors of the township, showing,

Director to report to township clerk.

1. The whole number of children belonging to the district, between the ages of four and eighteen years, according to the census taken as aforesaid :

2. The number attending school during the year, under four, and also the number over eighteen years of age :

3. The whole number that have attended school during the year :

4. The length of time the school has been taught during the year by a qualified teacher, the name of each teacher, the length of time kept by each, and the wages paid to each :

5. The average length of time scholars between four and eighteen years of age have attended school during the year :

Contents of report.

6. The amount of money received from the township treasurer, apportioned to the district by the township clerk :

7. The amount of money raised by the district, and the purposes for which it was raised :

8. The kinds of books used in the school :

9. Such other facts and statistics in regard to schools and the subject of education, as the superintendent of public instruction shall direct.

District Board.

SEC. 55. The moderator, director and assessor shall constitute the district board.

District board.

SEC. 56. Said board shall, between the last Monday of September and the second Monday of October in each year, make out and deliver to the supervisor of each township in which any part of the district is situated, a report in writing under their hands, of all taxes voted by the district during the preceding year, and of all taxes which said board is authorized to impose, to be levied on the taxable property within the district.

Board to report amount voted by district, &c.

SEC. 57. The district board may purchase, at the expense of the district, such school books as may be necessary for the use of children admitted by them to the district school free of charge, and they shall include the amount of such purchases, and the amount which would have been payable for fuel and teachers' wages by persons exempted from the payment thereof, together with any sums on the district rate bills, which could not be collected, in their report to the supervisor or supervisors, to be assessed as aforesaid.

Purchase of books for poor children.

SEC. 58. Said board shall exempt from the payment of teachers' wages, and from providing fuel for the use of the district, all such persons residing therein, as in their opinion ought to be exempted, and shall certify such exemptions to the director ; and the children of such persons shall be admitted to the district school free of charge, during the time of such exemption.

Exemption of poor persons from payment of tuition, &c.

SEC. 59. They shall purchase or lease a site for a school house, as shall have been designated by the district, in the corporate name thereof, and shall build, hire or purchase such school house out of the fund provided for that purpose, and make sale of any site or other property of the district, when lawfully directed by the qualified voters,

Board shall purchase or hire site for school-house, &c.

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at an annual or special meeting: Provided, that the district board shall not in any case build a stone or brick school house upon any site, without having first obtained a title in fee to the same, or a lease for ninety-nine years; and also that they shall not in any case build a frame school house upon any site for which they have not a title in fee, or a lease for fifty years, without reserving the privilege of removing the said school house when lawfully directed so to do by the qualified voters of the district, at an annual or special meeting.

Board to apply school moneys.

SEC. 60. The district board shall apply and pay over all school moneys belonging to the district, in accordance with the provisions of law regulating the same, as may be directed by the district; but no school moneys apportioned to any district shall be appropriated to any other use than the payment of teachers' wages, and no part thereof shall be paid to any teacher who shall not have received a certificate as required in this chapter, before the commencement of his school.

Bond to be required of assessor.

SEC. 61. The moderator and director shall require of the assessor, and the assessor shall execute to the district, a bond in double the amount of money to come into his hands as such assessor during the year, as near as the same can be ascertained, with two sufficient sureties to be approved by the moderator and director, conditioned for the faithful application of all moneys that shall come into his hands by virtue of his office.

Where bond to be lodged, and when sued, &c.

SEC. 62. Such bond shall be lodged with the moderator, and in case of any breach of the condition thereof, the director shall cause a suit to be commenced thereon in the name of the district, and the money, when collected, shall be paid into the township treasury, for the use of the district, subject to the order of the proper district officers.

Report of receipts and disbursements.

SEC. 63. Said board shall present to the district, at each annual meeting, a report in writing, containing an accurate statement of all moneys of the district received by them, or any of them, during the preceding year, and of the disbursements made by them, with the items of such receipts and disbursements.

Statement of taxes, &c.

SEC. 64. Such report shall also contain a statement of all taxes assessed upon the taxable property of the district during the preceding year, the purposes for which such taxes were assessed, and the amount assessed for each particular purpose, and said reports shall be recorded by the director in a book to be provided and kept for that purpose.

Board to have custody of district property.

SEC. 65. The said district board shall have the care and custody of the school house and other property of the district, except so far as the same shall be specially confided to the custody of the director, including all books purchased for the use of pupils admitted to the school free of charge.

To fill vacancies.

SEC. 66. The said board shall have power to fill, by appointment, any vacancy that shall occur in their own number, and it shall be their duty to fill such vacancy within ten days after its occurrence.

Board may appoint assessor in certain cases.

SEC. 67. If the assessor shall fail to give bond as is required in this chapter, or from sickness or any other cause, shall be unable to attend to the duty of collecting any district rate bill, the said board shall appoint an acting assessor to collect the same, who shall possess all the powers of the district assessor for that purpose, and shall, before proceeding to the collection thereof, give bond to the district in double the amount of money to be collected, in the same manner, and

with the same effect as the district assessor is required to give such bond.

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Township Board of School Inspectors.

SEC. 68. The inspectors elected at the annual township meetings, together with the township clerk, shall constitute the township board of school inspectors; and the inspector elected at the annual township meeting, having the shortest time to serve, shall be chairman of said board, and the said township clerk shall be the clerk thereof.

Board of school inspectors.

SEC. 69. The chairman of said board shall be the treasurer thereof, and shall give bond to the township in double the amount of library moneys to come into his hands during his term of office, as near as the same can be ascertained, with two sufficient sureties to be approved by the township clerk, conditioned for the faithful appropriation of all moneys that may come into his hands by virtue of his office.

Chairman of board to be treasurer and give bond.

SEC. 70. Said bond shall be filed with the township clerk, and in case of the non-fulfillment thereof, said clerk shall cause a suit to be commenced thereon, and the moneys collected in such suit shall be paid into the township treasury for the benefit of the township library.

In case of breach, bond to be sued.

SEC. 71. The inspectors shall divide the township into such number of school districts as may from time to time be necessary, which districts they shall number, and they may regulate and alter the boundaries of the same as circumstances shall render proper; but no district shall contain more than nine sections of land, and each district shall be composed of contiguous territory, and be in as compact a form as may be; but no land shall be taxed for building a school house, unless some portion of every legal subdivision of said land shall be within two and one-half miles of said school house site.

Formation of districts.

SEC. 72. They may attach to a school district any person residing in the township, and not in any organized district, at his request; and for all district purposes, except raising a tax for building a school house, such person shall be considered as residing in such district; but when set off to a new district, no sum shall be raised for such person as his proportion to the district property.

Persons residing out of district may be attached.

SEC. 73. The inspectors shall apply for and receive from the township treasurer, all moneys appropriated for the township library of their township, and shall purchase the books, and procure the necessary appendages for the township library, and make such rules for the regulation thereof, and the preservation of the books contained in it, as they may deem proper.

Inspectors to receive and appropriate library money.

SEC. 74. They shall appoint one of their number to visit each school in the township having a qualified teacher, at least once in each school term in which a school is taught, who shall inquire into the condition of such schools, examine the scholars, and give such advice to both teachers and pupils as he may think beneficial.

To appoint one of their number to visit schools.

SEC. 75. When a new district is formed, in whole or in part, from one or more districts possessed of a school house, or entitled to other property, the inspectors, at the time of forming such new district, shall ascertain and determine the amount justly due to such new district, from any district out of which it may have been, in whole or in part formed, as the proportion of such new district, of the value of the school house and other property belonging to the former district at the time of such division.

When part of district set off, value of property to be apportioned.

**TITLE XI.
CHAPTER 58.**

How proportion
to be ascertained.

SEC. 76. Such proportion shall be ascertained and determined according to the value of the taxable property of the respective parts of such former district, at the time of the division, by the best evidence in the power of the inspectors, and such amount of any debt due from the former district, which would have been a charge upon the new, had it remained in the former district, shall be deducted from such proportion.

To be certified to
supervisor. How
disposed of.

SEC. 77. The amount of such proportion, when so ascertained and determined, shall be certified by the township clerk to the supervisor of the township, whose duty it shall be to assess the same upon the taxable property of the district retaining the school house or other property of the former district, in the same manner as if the same had been authorized by a vote of such district, and the money so assessed shall be placed to the credit of the taxable property taken from the former district, and shall be in reduction of any tax imposed in the new district on said taxable property for school district purposes.

When appor-
tionment col-
lected to be paid
over.

SEC. 78. When collected, such amount shall be paid over to the assessor of the new district to be applied to the use thereof, in the same manner, under the direction of its proper officers, as if such sum had been voted and raised by said district for building a school house or other district purposes.

Annual report of
inspectors.

SEC. 79. Between the first and fifteenth days of October in each year, the inspectors shall make out and deliver to the township clerk, a report to the county clerk, setting forth the whole number of districts in their township, the amount of money raised and received for the township library, together with the several particulars set forth in the reports of the school directors, for the preceding school year.

Record of teach-
er to be examin-
ed before report
made, &c.

SEC. 80. The board of inspectors, before making their annual report to the county clerk, shall examine the record of teachers to whom certificates have been given by them, and if in any school district a school shall not have been taught for three months during the preceding school year by a qualified teacher, no part of the public money shall be distributed to such district, although the report from such district shall set forth that a school has been so taught; and it shall be the duty of the board to certify the facts in relation to any such district in their report to the county clerk.

Formation of
districts in two
or more town-
ships.

SEC. 81. Whenever it shall be necessary or convenient to form a district from two or more adjoining townships, the inspectors, or a majority of them, of each of such adjoining townships, may form such district, and direct which township clerk shall make and deliver the notice of the formation of the same to a taxable inhabitant thereof, and may regulate and alter such district as circumstances may render necessary; and they shall also designate the township to which the director of such district shall make his annual report.

Director to re-
port to each
township.

SEC. 82. The director of every district formed as provided in the preceding section, shall also report to the clerk of each township in which the district is in part situated, the number of children between the ages of four and eighteen years in that part of the district lying in such township, and books shall be drawn from the library of each township for the use of such district; but the district shall have access to but one such library at the same time, and the said inspectors shall establish the order in which books shall be drawn from each township library.

SEC. 83. Such school districts already formed from two or more

townships, shall continue to be governed by the regulations already established according to law, in relation to the annual reports, and the drawing of books from the township libraries, subject to such changes as may be made in respect thereto by the said inspectors, in conformity with the preceding provisions.

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CHAPTER 58.**

Districts formed from two or more townships, how regulated.

SEC. 84. The full amount of all taxes to be levied upon the taxable property in such district, shall be certified by the district board to the supervisor of each of such townships, and each of said supervisors shall certify to each other supervisor within whose township such district is in part situated, the amount of taxable property in that part of the district lying in his township; and such supervisors shall respectively ascertain the proportion of such taxes to be placed on their respective assessment rolls, according to the amount of taxable property in each part of such district.

Amount of taxes, how certified and apportioned.

SEC. 85. It shall be the duty of the inspectors to examine annually, all persons offering themselves as candidates for teachers of primary schools in their township, in regard to moral character, learning and ability to teach a school; and they shall deliver to each person so examined and found qualified, a certificate signed by them, in such form as shall be prescribed by the superintendent of public instruction; which certificate shall be in force for two years from the date thereof, unless annulled within that time, and no person shall be deemed a qualified teacher within the meaning of this chapter, who has not such a certificate in force.

Examination of teachers.

SEC. 86. For the purpose of making such examination, the board of school inspectors shall meet on the second Saturday of April and first Saturday of November in each year, at the office of the township clerk, or at such other place as they shall designate, of which meetings the township clerk shall give at least ten days' notice in writing, by posting up the same in three public places in the township.

Meetings for examining teachers, and notice thereof.

SEC. 87. The inspectors may make such examination at such other times as they may designate for that purpose, but shall make no charge against the township for examining teachers at any other times than those specified in the preceding section.

Examination at other times.

SEC. 88. The examination of teachers shall be public, and no certificate shall be given by the inspectors, unless they are satisfied that the applicant possesses a good moral character, and a thorough and accurate knowledge of the several branches of study usually taught in primary schools, and is competent in other respects to teach and govern a school.

Examination to be public—qualifications of teachers.

SEC. 89. When a district is situated in two or more townships, the teacher for such district shall be examined by the inspectors of the township to which the director is required to make his annual report.

Where teacher to be examined for district situated in two or more townships.

SEC. 90. Whenever the inspectors shall deem it necessary to re-examine any teacher of a primary school in their township, they shall give five days' notice to such teacher of the time and place of such re-examination, and of their intention to annul his certificate if they find him deficient in the requisite qualifications; and at the time and place specified in the notice, if such teacher shall not appear and submit to such re-examination, or if he shall be found deficient as aforesaid, the inspectors shall annul the said certificate.

Inspectors may re-examine teacher, and annul certificate.

SEC. 91. The whole number of meetings of said board of inspectors during any one year, at the expense of the township, shall not exceed six; and whenever said board shall meet for the purpose of

Number of meetings of board. Notice in certain cases.

**TITLE XI.
CHAPTER 58.**

Districts may be formed from two or more districts, and pupils classified.

forming or altering school districts, they shall cause the like notice to be given as is required for meetings to examine teachers.

SEC. 92. Whenever the board of inspectors of any township shall deem that the interests of any of the schools will be best promoted by so doing, they may form a single district out of any two or more districts therein, and classify the pupils in such district into two or more classes, according to their proficiency and advancement in learning, and require that such pupils be taught in distinct schools or departments as classified by them, and such district may have the same number of school houses, if necessary, and raise the same amount of taxes which the original districts forming the same could raise if not united.

On application of district board, inspector may classify pupils in any district, &c.

SEC. 93. The said inspectors may also, on the application of the district board of any district, classify the pupils therein in the manner prescribed in the preceding section, and require that such pupils be taught in distinct departments, whenever they shall judge that the interests of the school will be best promoted thereby; and in case of any such classification as is provided for in this or the preceding section, as many teachers may be employed for each district, as there are departments in which teachers are required.

Inspectors to account to township board.

SEC. 94. It shall be the duty of the board of inspectors, to render to the township board, on the Tuesday next preceding the annual township meeting, a full and true account of all moneys received and disbursed by them as such inspectors during the year, which account shall be settled by said township board, and such disbursements allowed if the proper vouchers are presented.

When inspectors to supply vacancy in district board. Power to appoint librarian.

SEC. 95. Whenever any district board shall fail to supply any vacancy that shall occur in their own number, within ten days after the time of its occurrence, the board of inspectors shall fill the same by appointment. The board of inspectors shall have power to appoint, annually, a librarian, whose duty it shall be to take charge of the township library, and to perform all the duties of librarian required to be performed by the township clerk, and to be subject to the same fines and penalties for the non-performance of such duties. He shall receive such annual compensation as the township board shall audit and allow.

Certain Duties of Township Clerk.

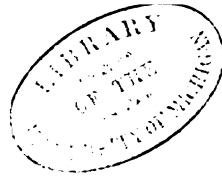
Clerk of board of inspectors.

SEC. 96. The township clerk shall be the clerk of the board of school inspectors by virtue of his office, and shall attend all meetings of said board, and under their direction prepare all their reports and record the same, and shall record all their proceedings, including the names of teachers to whom certificates shall have been given, with the date of each certificate, and the name of each teacher whose certificate shall have been annulled, with the date of such annulment.

Clerk to apportion school moneys.

SEC. 97. On receiving notice from the county treasurer, of the amount of school moneys apportioned to his township, he shall apportion the same amongst the several districts therein entitled to the same, in proportion to the number of children in each between the ages of four and eighteen years, as the same shall be shown by the annual report of the director of each district for the school year last closed.

SEC. 98. Said clerk shall also apportion, in like manner, on receiving notice of the amount from the township treasurer, all moneys



raised by township tax, or received from other sources for the support of schools, and in all cases make out and deliver to the township treasurer, a written statement of the number of children in each district drawing money, and the amount apportioned to each district, and record the apportionment in his office.

**TITLE XI.
CHAPTER 58.**

To apportion school moneys raised by township, and record apportionment.
To keep books and papers.

Sec. 99. He shall receive and keep all reports to the inspectors from the directors of the several school districts in his township, and all the books and papers belonging to the inspectors, and file such papers in his office.

Sec. 100. He shall receive all such communications as may be transmitted to him by the superintendent of public instruction, and dispose of the same in the manner directed therein.

To receive and dispose of communications from superintendent.

Sec. 101. He shall transmit to the county clerk all such reports as may be delivered to him for that purpose by the inspectors, within the time limited in this chapter.

To transmit inspectors' report.

Sec. 102. Each township clerk shall cause a map to be made of his township, showing by distinct lines thereon, the boundaries of each school district, and parts of school districts therein, and shall regularly number the same thereon as established by the inspectors.

To make map of districts.

Sec. 103. One copy of such map shall be filed by the said clerk in his office, and one other copy he shall file with the supervisor of the township; and within one month after any division or alteration of a district, or the organization of a new one in his township, the said clerk shall file a new map and copy thereof as aforesaid, showing the same.

To file copy of map, and deliver copy to supervisor.

Sec. 104. The clerk shall also certify to the supervisor the amount to be assessed upon the taxable property of any school district retaining the district school house or other property, on the division of the district, as the same shall have been determined by the inspectors, and he shall also certify the same to the director of such district, and to the director of the district entitled thereto.

To certify amount to be collected on division of a district.

Sec. 105. Said clerk shall also be the township librarian, and as such shall have the custody of the township library; and he shall do and execute all such other acts and things pertaining to his office, as may be required of him by the inspectors.

Clerk to be librarian.

Of Taxes for School Purposes.

Sec. 106. It shall be the duty of the supervisor of the township to assess the taxes voted by every school district in his township, and also all other taxes provided for in this chapter, chargeable against such district or township, upon the taxable property of the district or township respectively, and to place the same on the township assessment roll in the column for school taxes, and the same shall be collected and returned by the township treasurer, in the same manner, and for the same compensation as township taxes.

Assessment and collection of taxes for school purposes.

Sec. 107. The supervisor shall also assess upon the taxable property of his township, one mill on each dollar of the valuation thereof in each year; and twenty-five dollars of the same shall be applied to the purchase of books for the township library, and the remainder thereof shall be apportioned to the several school districts in the township, for the support of schools therein, and the same shall be collected and returned in the same manner as provided in the preceding section; and all school taxes returned for non-payment, shall be collected in the same manner as state and county taxes.

Assessment and collection of township, school and library tax.

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CHAPTER 58.**

Statement to be delivered to treasurer with warrant, &c.

SEC. 108. The supervisor, on delivery of the warrant for the collection of taxes to the township treasurer, shall also deliver to said treasurer a written statement of the amount of school and library taxes, the amount raised for district purposes on the taxable property of each district in the township, the amount belonging to any new district on the division of the former district, and the names of all persons having judgments assessed under the provisions of this chapter upon the taxable property of any district, with the amount payable to such person on account thereof.

School tax to be retained by treasurer, subject to warrant, &c.

SEC. 109. The township treasurer shall retain in his hands, out of the moneys collected by him, after deducting the amount of the tax for township expenses, the full amount of the school tax on the assessment roll, and hold the same subject to the warrant of the proper district officers, to the order of the school inspectors, or of the persons entitled thereto.

Township treasurer to apply to county treasurer for moneys, &c.

SEC. 110. Said treasurer shall, from time to time, apply to the county treasurer for all school and library moneys belonging to his township, or the districts thereof; and on receipt of the moneys to be apportioned to the districts, he shall notify the township clerk of the amount to be apportioned.

Certain Duties of the County Clerk.

County clerk to receive and dispose of communications from superintendent.

SEC. 111. It shall be the duty of each county clerk to receive all such communications as may be directed to him by the superintendent of public instruction, and dispose of the same in the manner directed by said superintendent.

To report to superintendent.

SEC. 112. The clerk of each county shall, on or before the tenth day of November in each year, make and transmit to the superintendent of public instruction, a report in writing, setting forth the whole number of townships in his county, distinguishing those from which the required reports have been made to him by the inspectors, and containing an abstract of their reports.

To report to county treasurer statement of children, his compensation.

SEC. 113. He shall also within the time mentioned in the preceding section, make and deliver to the county treasurer, a written statement of the whole number of children in each township in the county, between the ages of four and eighteen years, as shown by the inspectors' reports; and the board of supervisors of each county shall allow to the clerk thereof such compensation as they may deem reasonable for the services required of him by the provisions of this chapter.

Libraries.

Library to be maintained in each township

SEC. 114. A township library shall be maintained in each organized township in this state, which shall be the property of the township, and the parents and guardians of all children therein between the ages of four and eighteen years, shall be permitted to use books from such library without charge, being responsible to the township for the safe return thereof, and for any injury done thereto, according to such rules and regulations as are or may be established by the board of school inspectors of the township.

Books to be drawn once in three months, and returned by directors.

SEC. 115. The books in such library shall, once in three months, be distributed by the township librarian among the several school districts of the township, in proportion to the number of children in each between the ages aforesaid, as the same shall appear by the last

report of the director thereof, and said books shall be drawn and returned by the several directors for their respective districts.

SEC. 116. The clear proceeds of all fines for any breach of the penal laws of this state, and for penalties, or upon any recognizances in criminal proceedings, and all equivalents for exemption from military duty, when collected in any county, and paid into the county treasury, together with all moneys heretofore collected and paid into said treasury on account of such fines or equivalents, and not already apportioned, shall be apportioned by the county treasurer, between the first and tenth days of April in each year, among the several townships in the county, according to the number of children therein between the ages of four and eighteen years, as shown by the last annual statement of the county clerk on file in his office; which money shall be applied to the purchase of books for the township library, and for no other purpose.

SEC. 117. In each district in which a district library has been established, the director shall, as the librarian of the district, distribute the books therein to the children of his district of proper age, and shall collect from the parents or guardians of such children, all such damages as they may respectively become liable to pay on account of any injury done to, or loss of, or neglect to return any of such books, or any books belonging to the township library, pursuant to such rules and regulations as shall be prescribed by the board of school inspectors.

SEC. 118. If such damages shall have occurred by reason of any injury to, or loss of, or neglect to return any books belonging to the township library, they shall be collected in the name of the township, and paid into the township treasury for the benefit of such township library, and if the same shall have accrued by reason of any injury to, or loss of, or neglect to return any books belonging to the district library, the same shall be collected in the name of the district, for the benefit of the district library.

Distribution of the Income of the School Fund.

SEC. 119. The interest of the primary school fund shall be distributed on the first Monday of April in each year, for the support of primary schools in the several townships in this state from which reports have been received by the superintendent of public instruction, in accordance with the provisions of this chapter, for the school year last closed, in proportion to the number of children in such townships between the ages of four and eighteen years; and the same shall be payable on the warrant of the auditor general to the treasurers of the several counties.

SEC. 120. The several county treasurers shall apply for and receive such moneys as shall have been apportioned to their respective counties, when the same shall become due; and each of said treasurers shall immediately give notice to the treasurer and clerk of each township in his county, of the amount of school moneys apportioned to his township, and shall hold the same subject to the order of the township treasurer.

SEC. 121. Whenever the clerk of any county shall receive from the superintendent of public instruction, notice of the amount of moneys apportioned to the several townships in his county, he shall file the same in his office, and forthwith deliver a copy thereof to the county treasurer.

**TITLE XI.
CHAPTER 58.**

Proceeds of fines, &c., to be apportioned by county treasurer among townships for purchase of books.

Director to distribute books of district library, and collect damages for injury done to, and books belonging to township library.

Damages to books, how collected and applied.

Interest of school fund to be distributed on first Monday of April in each year. Payable to county treasurers on warrant of auditor general.

County treasurer to receive moneys and notify clerk of each township.

County clerk receiving notice from superintendent of amount of moneys, to file same, and deliver copy to county treasurer.

**TITLE XI.
CHAPTER 58.**

Justices to have jurisdiction in certain cases.

Suit against district, how commenced.

No execution shall issue against district.]

Judgments against district to be certified to supervisor by assessor.

If assessor fails to certify, party may get certificate from justice or clerk.

If district in two or more townships, certificate to be made to supervisor of each.

Supervisors to assess amount of judgment and interest. How collected and returned.

Penalty for neglecting to serve notice of first meeting, &c.

Penalty on district officers for neglect, &c.

Of Suits and Judgments against School Districts.

SEC. 122. Justices of the peace shall have jurisdiction in all cases of assumpsit, debt, covenant, and trespass on the case against school districts, when the amount claimed, or matter in controversy shall not exceed one hundred dollars, and the parties shall have the same right of appeal as in other cases.

SEC. 123. When any suit shall be brought against a school district, it shall be commenced by summons, a copy of which shall be left with the assessor of the district, at least eight days before the return day thereof.

SEC. 124. No execution shall issue on any judgment against a school district, nor shall any suit be brought thereon, but the same shall be collected in the manner prescribed in this chapter.

SEC. 125. Whenever any final judgment shall be obtained against a school district, if the same shall not be removed to any other court, the assessor of the district shall certify to the supervisor of the township, and to the director of the district, the date and amount of such judgment, with the name of the person in whose favor the same was rendered, and if the judgment shall be removed to another court, the assessor shall certify the same as aforesaid, immediately after the final determination thereof, against the district.

SEC. 126. If the assessor shall fail to certify the judgment as required in the preceding section, it shall be lawful for the party obtaining the same, his executors, administrators or assigns, to file with the supervisor the certificate of the justice or clerk of the court rendering the judgment, showing the facts which should have been certified by the assessor.

SEC. 127. If the district against whom any such judgment shall be rendered, is situated in part in two or more townships, a certificate thereof shall be delivered as aforesaid to the supervisor of each township in which such district is in part situated.

SEC. 128. The supervisor or supervisors receiving either of the certificates of a judgment as aforesaid, shall proceed to assess the amount thereof, with interest from the date of the judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of the district, placing the same on the next township assessment roll in the column for school taxes, and the same proceedings shall be had, and the same shall be collected and returned in the same manner as other district taxes.

Penalties and Liabilities.

SEC. 129. Every taxable inhabitant receiving the notice mentioned in the first and second sections of this chapter, who shall neglect or refuse duly to serve and return such notice, and every chairman of the first district meeting in any district, who shall wilfully neglect or refuse to perform the duties enjoined on him in this chapter, shall respectively forfeit the sum of five dollars.

SEC. 130. Every person duly elected to the office of moderator, director or assessor of a school district, who shall neglect or refuse, without sufficient cause, to accept such office and serve therein, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by virtue of his office, shall forfeit the sum of ten dollars.

SEC. 131. Every person duly elected or appointed a school inspec-

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or, who shall neglect or refuse, without sufficient cause, to qualify and serve as such, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by virtue of his office, shall forfeit the sum of ten dollars.

Penalty on inspectors for not qualifying or neglecting duty.

SEC. 132. If any board of school inspectors shall neglect or refuse to make and deliver to the township clerk, their annual report to the county clerk, as required in this chapter, within the time limited therefor, they shall be liable to pay the full amount of money lost by their failure, with interest thereon, to be recovered by the township treasurer in the name of the township, in an action of debt or on the case.

Board of school inspectors liable for neglect. How recovered.

SEC. 133. If any township clerk shall neglect or refuse to transmit the report mentioned in the preceding section, to the county clerk, as required in this chapter, he shall be liable to pay the full amount lost by such neglect or refusal, with interest thereon, to be recovered in the manner specified in the preceding section.

Township clerk neglecting to transmit reports, liable for amount lost.

SEC. 134. Every county clerk who shall neglect or refuse to make the report required in this chapter, to be made by him to the superintendent of public instruction, within the time therefor limited, shall be liable to pay to each township the full amount which such township, or any school district therein, shall lose by such neglect or refusal, with interest thereon, to be recovered in the manner specified in the last two preceding sections.

County clerk neglecting to make annual report, liable for amount lost.

SEC. 135. All the moneys collected or received by any township treasurer under the provisions of either of the three last preceding sections, shall be apportioned and distributed to the school districts entitled thereto, in the same manner, and in the same proportion, that the moneys lost by any neglect or refusal therein mentioned would, according to the provisions of this chapter, have been apportioned and distributed.

Money collected on account of neglect, how disposed of.

SEC. 136. The township board of each township shall have power, and is hereby required, to remove from office, upon satisfactory proof, after at least five days' notice to the party implicated, any district officer or school inspector who shall have illegally used or disposed of any of the public moneys entrusted to his charge.

Removal of officer for illegal use of money.

Miscellaneous Provisions relating to Primary Schools.

SEC. 137. Any person paying taxes in a school district in which he does not reside, may send scholars to any district school therein, and such person shall, for that purpose, have and enjoy all the rights and privileges of a resident of such district, except the right of voting therein, and shall be rated therein for teachers' wages and fuel, and in the census of such district, and the apportionment of moneys from the school fund, scholars so sent, and generally attending such school, shall be considered as belonging to such district.

Persons paying taxes in district may send to school, and be rated therein.

SEC. 138. Whenever any portion of a school district shall be set off and annexed to any other district, or organized into a new one, after a tax for district purposes, other than the payment of any debts of the district, shall have been levied upon the taxable property thereof, but not collected, such tax shall be collected in the same manner as if no part of such district had been set off, and the said former district, and the district to which the portion so set off may be annexed, or the new district organized from such portion, shall each be entitled to such proportion of said tax, as the amount of taxable pro-

When district shall be divided, after tax assessed and not collected, how collected and apportioned.

TITLE XI.
CHAPTER 53.

District in two
or more town-
ships, income of
school fund, how
apportioned, &c.

perty in each part thereof bears to the whole amount of taxable property on which such tax is levied.

Sec. 139. For the purpose of apportioning the income of the primary school fund among the several townships, a district situated in part in two or more townships, shall be considered as belonging to the township to which the annual report of the director is required to be made, but money raised in any one of such townships for the support of schools therein, shall be apportioned to the districts and parts of districts therein, according to the number of children of the proper age in each.

Moneys may be
raised by town-
ships for support
of schools.

Sec. 140. The qualified voters of any township may, by vote at the annual township meeting, raise by tax a sum not exceeding fifty cents for every scholar in the township between the ages of four and eighteen years, for the support of common schools in the township; and such tax shall be levied, collected and returned, in the same manner as township taxes are levied, collected and returned,

TITLE XII.

TITLE XII.
CHAPTER 59.OF THE PUBLIC LANDS, AND THE SUPERINTENDENCE AND DISPOSITION
THEREOF.Chapter 59. Of the State Land Office, and the Officers connected
therewith.Chapter 60. Of the Superintendence and Disposition of the Public
Lands.

CHAPTER 59.

OF THE STATE LAND OFFICE, AND THE OFFICERS CONNECTED THEREWITH.

SECTION 1. The state land office established in the village of Marshall in the county of Calhoun, shall be continued at the place aforesaid, until otherwise provided by law.

Land office.
1844, p. 80, &c.

SEC. 2. The chief officer of the land office, shall be called the commissioner of the land office, and shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of two years, and until his successor shall be appointed and qualified.

Commissioner,
how appointed.

SEC. 3. The commissioner of the land office shall receive an annual salary of one thousand dollars, payable quarter yearly.

His salary y.

SEC. 4. Before entering upon the duties of his office, he shall take the oath prescribed by the twelfth article of the constitution of this state, and cause the same to be filed with the secretary of state, and shall also execute to the people of this state a bond in the penal sum of fifty thousand dollars, with two sufficient sureties to be approved by the auditor general and state treasurer, and deposite the same with the secretary of state.

Oath of office
and bond.

SEC. 5. The condition of said bond shall be, that the said commissioner shall faithfully discharge the duties of his said office, and that he will honestly and truly account for and pay over all moneys and evidences of debt that may come into his hands by virtue of his office, or into the hands of his deputy or clerk, according to law.

Condition of
bond.

SEC. 6. The said commissioner shall appoint a deputy, and may also appoint one clerk, if the business of his office shall require it, each of whom shall receive an annual salary not exceeding five hundred dollars, payable quarter yearly.

Commissioner
to appoint deputy
and clerk.

SEC. 7. Said deputy and clerk shall severally, before entering upon the duties of their office, take and subscribe the constitutional oath of office, and cause the same to be filed with the secretary of state, and the commissioner may remove them or either of them at his pleasure, and the said commissioner and his sureties shall be responsible for their official acts.

Deputy and clerk
to take oath—
commissioner re-
sponsible for
their acts.

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CHAPTER 59.**

Commissioner to keep record of sales, &c.

Monthly statement to state treasurer.

Moneys to be paid to state treasurer.

Commissioner to have charge of lands.

Annual report of commissioner.

Recorder of land office—his salary.

Recorder may appoint deputy; both to take oath.

Duties of recorder.

Ib.

Ib.

SEC. 8. The commissioner shall keep a record of the sales of lands, and of the moneys received by him on account either of principal or interest, the date of such sale or payment, the description of the lands sold, with the number of acres thereof, and the name of each purchaser, or person paying such moneys, to whom he shall give a receipt for such moneys, and shall credit the proper fund therewith.

SEC. 9. He shall, on the first Monday of each and every month, cause to be made out and transmitted to the state treasurer, a statement showing the amount of money, or evidences of debt received by him, the name of the persons paying the same, the time of payment, the number of the certificate upon which such moneys were paid, the kind of funds received, and the proper fund to be credited therewith.

SEC. 10. He shall also, on the first Mondays of March, June, September and December in each year, and at any other time when required by the state treasurer, deliver and pay over to said treasurer all moneys and evidences of debt received by him as aforesaid.

SEC. 11. The said commissioner shall have the general charge and supervision of all lands belonging to the state, or which may hereafter become its property, and also of all lands in which the state has an interest, or which are or may be held in trust by the state for any purpose mentioned in this title, and may superintend, lease, sell, and dispose of the same in such manner as shall be directed by law.

SEC. 12. He shall annually make a report to the legislature, of his official proceedings, showing the quantity of land sold or leased, and the amount received therefor; the amount of interest moneys received to the credit of the several funds, and all such other matters relating to his office as he may think proper to communicate.

SEC. 13. There shall also be appointed by the governor, an officer who shall be called the recorder of the land office, who shall hold his office for the term of two years, and until his successor shall be appointed and qualified, and shall keep his office in the said land office *aforesaid*, and receive an annual salary of four hundred dollars a year, payable quarter yearly.

SEC. 14. The said recorder may appoint a deputy, but without additional expense to the state, for whose official acts he shall be responsible; both of whom shall severally, before entering upon the duties of their office, take and subscribe the constitutional oath of office, and cause the same to be filed with the secretary of state.

SEC. 15. It shall be the duty of the recorder or his deputy, to countersign every certificate of purchase, receipt or other official instrument in writing, which may be issued or given by the said commissioner, and which purports to be evidence of moneys received by him; and unless such certificate, receipt or official instrument be so countersigned, it shall not be evidence of payment, nor valid in law.

SEC. 16. The said recorder, upon countersigning any certificate, receipt or other instrument as aforesaid, shall charge the commissioner with the amount received by him as therein mentioned, and credit the proper fund therewith, and shall also keep a record of the names of the persons paying the same, the number of the certificate upon which the amount shall be paid, and the time of the payment.

SEC. 17. The recorder shall also, after comparing the accounts kept by him with those kept by the commissioner, on the first Monday of each and every month, transmit to the state treasurer a statement of all the several certificates, receipts and other official instruments,

which have been issued or given by the commissioner, and countersigned as aforesaid, together with the dates, numbers and amounts thereof, the names of the several persons paying such sums, and the several funds to which they respectively belong.

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CHAPTER 60.

OF THE SUPERINTENDENCE AND DISPOSITION OF THE PUBLIC LANDS.

University and School Lands.

SECTION 1. The minimum price of the unsold and unimproved university lands, shall be twelve dollars per acre, and the minimum price of the unsold and unimproved school lands shall be four dollars per acre; but no such lands shall be otherwise sold until they shall once have been offered for sale at public auction, and no such lands shall be sold for less than the aforesaid prices respectively, nor shall any treasury notes or warrants be received for university lands hereafter forfeited to the state.

Minimum prices of university and school lands—to be first offered at public auction.

1844, p. 82, &c.

SEC. 2. The terms of payment on the sale of university and school lands, shall be twenty-five per centum of the purchase money to be paid at the time of the purchase, the balance of the principal at any time thereafter, at the option of the purchaser, with interest at the rate of seven per cent. per annum on the unpaid balance, payable on the first day of January, or within sixty days thereafter, in each and every year, at such place or places as shall be specified in the certificate of purchase.

Terms of payment.

SEC. 3. At the time of the sale of any such lands, the commissioner shall make out and deliver to the purchaser or purchasers thereof a certificate, in which the said commissioner shall, in the name of the people of this state, certify the description of land sold, the quantity thereof, and the price per acre, the consideration paid and to be paid therefor, and the time and terms of payment.

Certificate of purchase, what to contain.

SEC. 4. The said certificate shall further set forth, that in case of the non-payment of the interest due, by the first day of January or within sixty days thereafter, in each and every year, by the purchaser or purchasers, or by any person claiming under him or them, then the said certificate shall, from the time of such failure, be utterly void and of no effect, and the said commissioner may take possession thereof and re-sell the same as is hereinafter provided.

Ib.

SEC. 5. Any purchaser of university or school lands, his heirs or assigns, who shall have paid on or before the first day of March, in the year one thousand eight hundred and forty-two, a sum equal to twenty per cent. of the purchase money on his certificate, together with the interest up to said day; and any person who shall have become such purchaser since the thirteenth day of April, in the year one thousand eight hundred and forty-one, his heirs or assigns, who shall have paid according to the terms of his certificate, shall be privileged to pay the balance of principal due on his purchase at any time hereafter at his option; but in all cases the interest on the un-

What purchasers may pay balance at any time, &c.

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When commis-
sioner may take
possession and
re-sell.

paid balance of principal shall be paid on the first day of January, or within sixty days thereafter in each and every year.

SEC. 6. In case of non-payment, either of principal or interest, when due, according to the provisions of the preceding section, or according to the terms of the certificate of sale, as the case may be, such certificate shall become void and of no effect from the time of such failure, and the commissioner may take immediate possession thereof and re-sell the same.

Commissioner
may require se-
curity of purcha-
ser.

SEC. 7. The said commissioner shall, whenever in his opinion the interest of the state will not be secured by the payment in this chapter required to be made at the time of the purchase, require of the purchaser such security for the payment of any moneys to become due and payable according to the terms of the certificate of purchase, as in his judgment will secure the respective funds against loss.

Patents to be is-
sued by govern-
or.

SEC. 8. The governor of the state shall sign and cause to be issued patents for said lands as described in the certificates of sale, whenever the same shall be presented to him with the further certificate of the commissioner endorsed thereon, that the whole amount of principal and interest specified therein has been paid according to law, and that the holder of the certificate of purchase is entitled to a patent for the lands described therein.

Fee of land.

SEC. 9. The fee of each and every parcel of the said lands shall be and remain in the state until patents shall issue for the same respectively, upon full payment as aforesaid; and in case of a non-compliance by the purchaser, his heirs or assigns, with the terms of the certificate as aforesaid, or with the provisions of law applicable thereto, any and all persons being or continuing in possession of any such lands after a failure to comply with the terms of the certificate as aforesaid, or with such provisions of law as aforesaid, without a written permission of the commissioner of the land office, shall be deemed and held to detain such lands forcibly, and without right, and to be trespassers thereon.

Commissioner
may recover
amount due for
which security
is given.

SEC. 10. In all cases where security has been taken from the purchaser, pursuant to the provisions of the seventh section of this chapter, the commissioner shall have power to sue for and recover all such sums as may become due and payable, for which such security was given.

Improved lands,
how sold.

SEC. 11. All the improved portions of the university and school lands remaining unsold, shall be subject to sale at the respective prices at which they were severally offered at the last annual public sales, until the improvements on the same shall have been appraised as provided in this chapter.

Commissioner
may lay off tracts
into small lots,
and sell them.

SEC. 12. Whenever either the university or school fund will, in the opinion of the commissioner, be improved by laying off any section or tract of university or school lands, into small parcels, or village lots, the said commissioner may cause the same to be done, and may sell the same at the respective minimum prices established in this chapter; or if in his opinion any of such parcels or lots exceed in value such prices, he shall cause the same to be appraised by three disinterested freeholders of the county in which such parcels or lots are situated.

Appraisal.

Appraisers to be
sworn, and make
appraisal and re-
turn.

SEC. 13. Such freeholders shall be appointed by the commissioner, and after being first duly sworn so to do, shall appraise the several parcels or lots directed by said commissioner to be appraised by them,

at their true value respectively, and shall make a return of such appraisal duly certified by them, to the commissioner.

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SEC. 14. All parcels or lots so appraised, shall be subject to sale in the same manner, and upon the same terms and conditions, and the certificates of purchase shall have the same effect, as in the case of other university or school lands, according to the provisions of this chapter, at the prices at which the same were severally appraised, until a new appraisal shall be made, which the commissioner may, in his discretion, cause to be had in the manner aforesaid, and with the like effect; but no lots or parcels so appraised shall be sold for less than the minimum price of said lands established in this chapter.

Lots to be sold at appraised value, but not below minimum price.

SEC. 15. The said commissioner may also, in his discretion, reserve and withhold from sale, such portions of the university and school lands as in his opinion it may not be advantageous to sell and dispose of, and for so long a time as in his opinion will be most beneficial to the several funds affected thereby.

When land may be withheld from sale.

SEC. 16. All university and school lands which have been or may be forfeited by the non-payment of either principal or interest, and which have not been offered at public auction after forfeiture, before the same shall be subject to private entry, shall be re-offered for sale at public auction, and the minimum price of all portions or tracts upon which improvements shall have been made, shall be such as shall be determined by the commissioner in the manner hereinafter in this chapter provided.

Forfeited lands to be offered at auction.

Minimum price of improved lands.

SEC. 17. The sale of such forfeited lands shall be held at such times and places as shall be designated in a notice containing a description of the lands so forfeited, which notice shall be published once in each week at least four weeks successively before the time of sale, in a newspaper printed in the county where the lands are situated, if there be one, if not, then in a newspaper printed in an adjoining county, if there be one, and if there be none printed in an adjoining county, then in such newspaper as the commissioner shall designate.

Sale, when held, how notified.

SEC. 18. Certificates of purchase issued pursuant to the provisions of law, shall entitle the purchaser to the possession of the lands therein described, and shall be sufficient evidence of title to enable the purchaser, his heirs or assigns, to maintain actions of trespass for injuries done to the same, or ejectment, or any other proper action or proceeding to recover possession thereof, unless such certificate shall have become void by forfeiture; and all certificates of purchase in force, may be recorded in the same manner that deeds of conveyance are authorized to be recorded.

Rights of purchasers, &c., under certificate.

Certificates may be recorded.

SEC. 19. Any purchaser of university or school lands, may pay to the state treasurer the amount due on his certificate of purchase, whether principal or interest, and for the amount paid the treasurer shall give his receipt, which shall be countersigned by the auditor general; and a statement of all such payments shall be transmitted by said treasurer to the commissioner of the land office on or before the first Monday of each month.

Payments to state treasurer on certificates.

SEC. 20. In all cases where the rights of a purchaser shall have become forfeited under the provisions of this chapter, by his failure to pay the amount due upon his certificate of purchase, if such purchaser, his heirs or assigns shall, before the time appointed for the sale of the lands described in such certificate at public auction, pay to the commissioner of the land office, the full amount then due and payable

Redemption of rights forfeited by purchaser.

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1843, p. 149.

Lists of forfeited
lands, and unsold
lands improved,
to be sent to
county clerks,
&c.Supervisor to ap-
praise improve-
ments.

Provido.

On return of ap-
praisal commis-
sioner to fix
price.Price of unim-
proved universi-
ty lands.Leasing of im-
proved lands.University lands
in Ohio.

upon such certificate, and twenty-five cents on each dollar of such amount in addition thereto, such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns; and said certificate, from the time of such payment, shall be in full force and effect, as if no such forfeiture had occurred.

SEC. 21. On or before the first day of June in each year, the commissioner of the land office shall prepare and transmit to the clerks of the several counties in which the same are situated, lists of all the forfeited lands in the several townships therein, and of all the unsold university, school, and state building lands which he may have cause to believe are improved, together with proper forms of returns and certificates of appraisement, to be forthwith distributed by such clerks respectively to the several supervisors of townships to whom the same may be directed.

SEC. 22. Every supervisor of a township, upon receiving the lists and forms as aforesaid, shall proceed to estimate and appraise the value of all the improvements upon the several tracts or parcels of land mentioned in such lists, and after making such appraisement according to the forms prescribed by said commissioner, he shall make returns thereof duly certified by him to the commissioner, on or before the first day of August in the same year. ~~Provided~~ that the provisions of this section shall not apply to any settlement mentioned in or contemplated by the "act to provide for the sale of certain lands to the settlers thereon, and for other purposes," approved March twenty-fifth, one thousand eight hundred and forty, and the several acts amendatory thereof, whose lands have been forfeited to this state, or who has not become a purchaser of the lands on which he resides, and on which his settlement is made; nor shall it apply to any person who has made, or who hereafter may make improvements on any of the university, school or state building lands, and who shall hereafter become a purchaser of the same; but such settler or other person shall be entitled to enter the same upon the terms herein established for the sale of unimproved university lands, irrespective of the value of said improvements, and he shall not be chargeable for the value of said improvements so made by or assigned to him.

SEC. 23. On the return of such appraisement, the amount of the appraised value of improvements on each tract or parcel shall be divided by the number of acres contained therein, and the result, together with the minimum price per acre of unimproved lands of the same description as established in this chapter, shall be the specific minimum price per acre of such tract or parcel, the improvements upon which shall have been so appraised, until the same shall be changed by a subsequent appraisal.

SEC. 24. The unimproved forfeited lands shall continue at the minimum price per acre of unsold and unimproved lands, as established in this chapter.

SEC. 25. The commissioner of the land office may, from time to time lease, for terms not exceeding one year, and until the same are disposed of according to law, all such university and school lands, and other lands belonging to the state, as shall have improvements on them; and such leases shall contain proper covenants to guard against trespasses and waste.

SEC. 26. The university lands of this state, lying near Toledo, in the state of Ohio, shall be excepted from the provisions of this chapter.

SEC. 27. Whenever it shall appear to the commissioner necessary, in order to ascertain the true boundaries of any tract or portion of the lands mentioned in this chapter, or to enable him to describe and dispose of the same, in suitable and convenient lots, he may cause all such necessary surveys to be made; and the expenses thereof shall be paid out of the proper fund, in the same manner as the other incidental expenses of the land office.

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Commissioner
may cause nec-
essary surveys
to be made.

State Building Lands.

SEC. 28. The minimum price of the unsold and unimproved state building lands shall be eight dollars per acre, and the minimum price of the improved state building lands shall be such as has been or may be determined by the commissioner in the manner provided in this chapter for determining the minimum price of improved university lands, subject to the provisions contained in the proviso in the twenty-second section of this chapter.

State building
lands.

1844, p. 90.

SEC. 29. The terms and conditions, and manner of sale of said lands, and of payment, both of principal and interest therefor, shall be the same in all respects as are prescribed in this chapter for the sale of university and school lands, and payment for the same, and the said commissioner shall issue certificates of purchase upon the sale thereof, in the same form, and with the like effect, as upon the sale of university or school lands.

Terms and con-
ditions of sale.

State Salt Spring Lands.

SEC. 30. The minimum price of the lands selected for this state as salt spring lands, and which shall not have been improved, shall be four dollars per acre; and the minimum price of the improved salt spring lands shall be such as may be determined by the commissioner in the manner provided in this chapter for determining the minimum price of improved university and school lands, but none of said lands shall be sold for less than four dollars per acre.

Salt spring lands.

1845, p. 119, &c.

SEC. 31. The terms and conditions, and manner of sale of said lands, and of payment, both of principal and interest therefor, shall be the same in all respects as are prescribed in this chapter for the sale of university and school lands and payment therefor, and the commissioner of the land office shall issue certificates of purchase upon the sale thereof, in the same form, and with the like effect, as upon the sale of university or school lands.

Terms and con-
ditions of sale.

SEC. 32. None of said salt spring lands shall be subject to private entry until they shall have been first advertised and offered for sale at public auction in the manner prescribed in this chapter for advertising and selling forfeited university and school lands.

Lands to be first
offered at public
auction.

SEC. 33. Such of the said lands as have been improved by the state by boring thereon for salt springs, and such other of said lands as in the opinion of the governor, state geologist and commissioner, should not be sold, shall be withheld from sale until otherwise provided by law.

Certain portions
not to be sold.

SEC. 34. Whenever, in the opinion of the commissioner, the interests of the state will be promoted by laying off any section or tract of said lands into small parcels or village lots, he shall cause the same to be done, and such lots or parcels to be appraised in the manner provided in this chapter, for appraising university and school lands laid off into small parcels or village lots, and such appraisal shall be the minimum price at which such lots or parcels shall be respectively sold.

When tracts to
be laid off into
village lots, &c.,
and how mini-
mum price estab-
lished.

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Noneys received on sale to be credited to general fund.

Price of internal improvement lands to be \$1.25 per acre. To be first offered at public auction. 1844, p. 90, &c.

Not to be sold for less than the minimum price.

Lands obtained in payment of debts, &c., how appraised and sold.

When subject to private sale.

On the sale, certificate to be given, what to contain.

Kind of funds received to be endorsed on certificate.

Notice of public sale, how to be given.

Commissioner to transmit to governor a statement of certificates issued once in three months.

Governor to issue patents and

SEC. 35. All sums received on account of the sale of said salt spring lands, shall be paid into the treasury of the state, to the credit of the general fund.

Internal Improvement Lands.

SEC. 36. The minimum price of the unsold portion of the half million of acres of land granted to this state by the act of Congress of September fourth, one thousand eight hundred and forty-one, for internal improvement purposes, shall be one dollar and twenty-five cents per acre; and none of the internal improvement lands of this state shall be subject to private entry, until the same shall have been first offered at public auction.

SEC. 37. None of said lands shall be sold for less than their respective minimum prices, and all of said lands not sold at such public auction, shall be subject thereafter to sale at their minimum prices respectively.

SEC. 38. All lands and real estate which have or may become the property of this state, the title to which has been or may be derived from any source in the payment or collection of debts to the state, shall be appraised by the commissioner of the land office, the auditor general, state treasurer and secretary of state, or any two of them, as soon as practicable after the title thereto shall become vested in the state; which appraisal shall be in writing, and one copy thereof shall be filed in the office of the commissioner, and one copy in the office of the auditor general.

SEC. 39. The said lands and real estate, after being once offered for sale at public auction at not less than the appraised value, and remaining unsold, shall be subject to private sale at any time thereafter, at the minimum price established by such appraisal, or by any subsequent appraisal which the said officers may, in their discretion, at any time make.

SEC. 40. On the sale of any of said internal improvement lands, the commissioner shall make out and deliver to the purchaser thereof a certificate, containing a description of the same, the contents thereof, the amount paid therefor, the date of the sale and the name of the purchaser, and setting forth that upon presentation thereof at the office of the secretary of state, the purchaser will be entitled to a patent from the governor for the lands therein described.

SEC. 41. He shall also endorse upon the certificate the kind of funds or evidences of debt received in payment for the lands described therein.

SEC. 42. Whenever it shall be necessary to offer any of said lands at public sale, the commissioner shall cause a notice, containing a description of each parcel thereof, and the time and place appointed for the sale, to be published at least four weeks successively in a newspaper printed in each county in which any of such lands are situated, if there be one, and also in the state paper.

SEC. 43. On or before the first days of January, April, July and October in each year, the commissioner shall cause to be made out and transmitted to the governor, a statement of all the certificates of purchase issued by him for any of said lands, the numbers thereof, a description of the lands mentioned in each, and the names of the purchasers thereof respectively.

SEC. 44. On the receipt of such statement, the governor shall exe-

cute and deposite with the secretary of state, patents for the lands described in such certificates, to the purchasers thereof or their assigns respectively; which patents, or duly certified copies thereof, shall be sufficient evidence of the facts contained therein; but no such patent shall be issued by the governor for any such lands, unless he shall be satisfied that the title of the state thereto is perfect and complete.

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deposite the same with secretary of state.

SEC. 45. The secretary of state shall not deliver any such patent, until the original certificate of the commissioner shall be deposited in his office, unless the same shall have been lost or destroyed, and upon presenting to the commissioner an affidavit satisfactory to him, showing that such original certificate has been lost or destroyed as aforesaid, the said commissioner shall issue to the person entitled thereto, a duplicate thereof.

Patent not to be issued unless title of state is perfect.

SEC. 46. Upon the presentation of such duplicate certificate and affidavit to the secretary of state, he shall deliver to the person so entitled, the patent for the land described therein, and shall file and preserve all such certificates and affidavits in his office.

Secretary not to deliver patent, until certificate is surrendered unless lost or destroyed.

SEC. 47. The certificate of purchase of any of said lands, given by the commissioner as aforesaid, shall be sufficient evidence of title in the purchaser, his heirs or assigns, to enable him or them to maintain trespass or any other proper action for any injury to the lands therein described, or to recover possession thereof, and such lands shall be liable to be taxed from the time of issuing such certificate.

Certificate evidence of title for certain purposes.

SEC. 48. All warrants drawn by the auditor general, and now outstanding, or that may hereafter be drawn according to law, against any of the funds of this state, and all treasury notes and other lawful obligations of this state, payable out of the state treasury, shall be receivable for all lands belonging to this state for purposes of internal improvement, and the commissioner shall, on receiving any such warrants or obligations bearing interest, endorse the amount of interest accrued thereon.

What may be received in payment.

Miscellaneous Provisions.

SEC. 49. The commissioner of the land office shall have the custody of all books and papers relating to any of the public lands mentioned in this chapter, except such as properly belong to the records or files of other offices.

Commissioner to have custody of books and papers relating to lands.
1844, p. 93.

SEC. 50. The state geologist shall furnish the land office with a map of each of the several counties of this state, as soon as the same are completed.

Maps to be furnished for land office.

SEC. 51. The said commissioner shall, on or before the third Monday in March in each year, transmit to the treasurer of each county in which any lands mentioned in this chapter may have been sold during the year then next preceding, a description of each parcel of the lands so sold in such county, and the names of the purchasers, distinguishing university and school lands from others.

Lists of lands sold to be sent to county treasurer annually.

SEC. 52. Whenever the commissioner shall lay off any tract of land into small parcels or village lots as provided in this chapter, he shall cause a correct map of the same to be entered of record in the county where said lands may be situated; and all parcels or lots heretofore laid out, shall in like manner be entered of record.

Map of village lots to be recorded.

SEC. 53. The several county treasurers receiving such descriptions shall, on or before the first Monday of April, deliver to the supervisor

Lists to be furnished to super-

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visors by county treasurer.

Registers to record patents; effect of record.

Incidental expenses of land office how allowed and paid.

Sale made by mistake, &c., to be void, and money to be refunded, on surrender of certificate.

Assignees of purchasers, their rights and liabilities.

In what parcels land to be sold.

New certificates may be issued in certain cases.

Damages recovered to be paid over for benefit of proper fund.

Trespass, &c., on public land, a misdemeanor, and how punished.

Courts to charge grand jury specially.

of each township in which any of such lands are situated, a description of such lands therein, with the names of the purchasers of the same.

SEC. 54. The registers of deeds of the several counties are authorized to record all patents issued by the governor pursuant to the provisions of this chapter, and the record thereof shall have the same effect as the record of other conveyances executed according to the laws of this state.

SEC. 55. The necessary incidental expenses of the land office shall be paid out of the several funds, respectively, in relation to which they were incurred, and upon the presentation of satisfactory vouchers therefor to the board of state auditors, shall be allowed by them at their annual settlement with the commissioner.

SEC. 56. In case of any sale made by mistake, or not in accordance with law, or obtained by fraud, the same shall be void; and no certificate of purchase issued thereon shall be of any effect, but the holder of any such certificate shall be required to surrender the same to the commissioner, who shall thereupon refund the amount paid in the like funds received by him on such certificate.

SEC. 57. The legal assignees of all bona fide purchasers of any of the lands mentioned in this chapter, shall be subject to, and governed by, the provisions of law applicable to the respective purchasers of whom they are the assignees, and they shall have the same rights in all respects, as original purchasers of the same class of lands.

SEC. 58. All sales of lands by the commissioner, shall be made according to the subdivisions thereof by the United States surveys, unless the same shall have been laid off into smaller lots as provided in this chapter, or unless, in the opinion of the commissioner, any of said lands can be more advantageously disposed of according to other divisions to be ascertained and distinctly described by him.

SEC. 59. When an original certificate of purchase shall have been issued by the commissioner for a quarter section or more of said lands, according to the legal subdivisions thereof, he may in his discretion, upon the surrender of such certificate, and the payment of one dollar for each new certificate requested, issue a new certificate for each smaller legal subdivision included in such original purchase, not being less than one-fourth of a quarter section, if in his opinion no injury will result therefrom.

SEC. 60. All damages recovered for any trespass or other injury upon or to any of the lands mentioned in this chapter, shall be paid over to the commissioner of the land office, or into the state treasury, for the benefit of the fund to which the same may properly belong.

SEC. 61. Every person who shall commit any wilful trespass upon any of the lands owned, or held in trust or otherwise by this state, either by cutting down or destroying any timber or wood, standing or growing thereon, or by carrying away any timber or wood therefrom, or who shall injure or remove any buildings, fences, improvements, or other property belonging or appertaining to said lands, or shall aid, direct or countenance any such trespass or other injury, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or both such fine and imprisonment, in the discretion of the court.

SEC. 62. It shall be the duty of every court having jurisdiction of

the same, specially to charge the grand jury at each term of such court, to inquire into all offences against the provisions of this chapter, and present any person who may be guilty of any such offence within their county.

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SEC. 63. Any person who shall commit any trespass upon any of the lands owned, or held in trust or otherwise by this state, shall be liable in treble damages, in an action of trespass to be brought in the name of the people of this state, if such trespass shall be adjudged to have been wilful; and single damages only shall be recovered in such action, if such trespass shall be adjudged to have been casual and involuntary.

Wilful trespasser liable in treble damages, casual, &c., in single damages.

SEC. 64. In case any person shall hold or continue in possession of any of the lands mentioned in this chapter, without express authority in writing from the commissioner of the land office, or contrary to the conditions or covenants of any lease or written agreement, he shall be liable to an action of forcible entry and detainer, or any other proper action or actions for the recovery of possession of such lands, and damages for the detention of the same.

Persons holding or continuing in possession of lands without authority, liable to action of forcible entry and detainer, &c.

SEC. 65. The prosecuting attorneys of the several counties shall promptly report to the commissioner, all trespasses committed upon any of said lands, which may come to their knowledge, and shall, when directed by the commissioner, prosecute all actions for any trespass or injury thereto, or for the recovery of possession thereof, or otherwise.

Prosecuting attorneys to report trespasses to commissioner, and prosecute actions when directed.

SEC. 66. It shall be the duty of each of said prosecuting attorneys, whenever requested by the commissioner, to advise with and give their opinion upon all questions of law which may be submitted to them by the said commissioner, relating to the duties of his office, without unnecessary delay, and without charge to the commissioner or to the state.

Prosecuting attorney to give legal opinion.

SEC. 67. The seal now in use in said land office shall continue to be the seal of said office, and in case the same should be lost or destroyed, another seal, with a similar device, shall be procured for said office by the commissioner thereof.

Seal of land office.

SEC. 68. All treasury notes or warrants bearing interest, drawn by authority of law on the treasurer of this state, shall be received in payment of principal for any of the university lands which have been heretofore sold, or which may hereafter be sold, and which have not once been sold and forfeited, in the same manner as they are by law receivable for any lands owned by this state, subject to the limitations hereinafter contained.

Certain obligations receivable for university lands.

1844, p. 18.

SEC. 69. The whole amount of such notes and warrants which may be received under the provisions of the preceding section, shall not exceed the residue of the sum of one hundred thousand dollars which shall remain after deducting the full amount of all sums which shall have been credited to the regents of the university, or to the university fund, on the principal of the "Michigan University State Stock," in pursuance of "an act authorizing the receipt of obligations of this state in payment of university lands," approved February twenty-eighth, one thousand eight hundred and forty-four, and of "an act for the relief of the university of Michigan," approved March eleventh, one thousand eight hundred and forty-four, and one hundred and fifty-six thousand dollars in addition thereto.

Limitation of amount.

1844, p. 18, 1838, p. 248, 1844, p. 117.

SEC. 70. The state treasurer shall, on the first days of January,

Amount received to be credited to

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university fund
quarterly.

Fund relieved
from payment of
interest on same
amount of stock,
&c.

Seal, evidence
of execution of
certificate.

April, July and October, in each year, make out a statement of the notes or warrants received in payment of principal for university lands pursuant to the provisions of the sixty-eighth section of this chapter during the preceding quarter, with an interest account upon the same, and shall thereupon credit the university fund with the amount of such notes or warrants and interest.

SEC. 71. From the date of each and every such credit, the university fund shall be relieved from the payment of interest on an amount of the said "Michigan University State Stock," equal to the amount of such credit; and when the amount of said "Michigan University State Stock" shall have been received into the state treasury, the state treasurer shall continue to make quarterly statements of the amount of treasury notes or warrants received, and credit the same to the university fund, and interest shall thereupon accrue, and shall annually be paid by the state to the treasurer of the board of regents, for the use of the university.

SEC. 72. The seal of the land office affixed to any certificate of purchase, receipt or other instrument issued by the commissioner of the land office, according to the provisions of this chapter, shall be prima facie evidence of the due execution of such certificate.

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CHAPTER 61.

OF THE REGULATION OF INTERNAL IMPROVEMENT.

SECTION 1. The internal improvements of the state shall continue to be regulated under existing provisions of law, until otherwise directed by the legislature.

Internal im-
provements to be
regulated under
existing laws.
1840, p. 91, &c.

TITLE XIV.

OF REAL PROPERTY, AND OF THE NATURE, QUALITIES AND ALIENATION OF ESTATES THEREIN.

Chapter 62. Of the Nature and Qualities of Estates in Real Property, and the Alienation thereof.

Chapter 63. Of Uses and Trusts.

Chapter 64. Of Powers.

Chapter 65. Of Alienation by Deed, and the Proof and Recording of Conveyances, and the Canceling of Mortgages.

Chapter 66. Of Estates in Dower, by the Curtesy, and General Provisions concerning Real Estate.

CHAPTER 62.

OF THE NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND THE ALIENATION THEREOF.

Enumeration of
estates in land.

SECTION 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates by (*at*) will and by sufferance.

What estate a
fee simple.

SEC. 2. Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasable or conditional, shall be a fee simple absolute, or an absolute fee.

Estates tail abolished,
their nature declared.

SEC. 3. All estates tail are abolished, and every estate which would be adjudged a fee tail, according to the law of the Territory of Michigan, as it existed before the second day of March, one thousand eight hundred and twenty-one, shall for all purposes be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

Certain remainders
valid.

SEC. 4. When a remainder in fee shall be limited upon any estate which would be adjudged a fee tail according to the law of the Territory of Michigan as it existed previous to the time mentioned in the preceding section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

Freeholds;
chattels real;
chattel interests.

SEC. 5. Estates of inheritance and for life shall be denominated estates of freehold; estates for years shall be denominated chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

Estates for life of
third persons,
when freehold,
&c.

SEC. 6. An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

SEC. 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

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SEC. 8. An estate in possession, is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to the possession is postponed to a future period.

Estates in possession, and in expectancy.
Definition of those estates.

SEC. 9. Estates in expectancy are divided into,

1. Estates commencing at a future day, denominated future estates : and,

Enumeration of estates in expectancy.

2. Reversions.

SEC. 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate, created at the same time.

Future estates.

SEC. 11. When a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

When they are remainders.

SEC. 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

Reversions.

SEC. 13. Future estates are either vested or contingent :

Vested and contingent future estates.

They are vested when there is a person in being who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate :

They are contingent whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

SEC. 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this chapter : Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

Void future estates. Suspending powers of alienation.
4 Paige, 342.

SEC. 15. The absolute power of alienation shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of two lives in being at the creation of the estate, except in the single case mentioned in the next section.

How long power of alienation may be suspended.

SEC. 16. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age.

Contingent remainder in fee.

SEC. 17. Successive estates for life shall not be limited, unless to persons in being at the creation thereof; and when a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and upon the death of those persons, the remainder shall take effect, in the same manner as if no other life estate had been created.

Limitation of successive estates for life.

SEC. 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee : nor shall any remainder be created upon such an estate in a term for years, unless it be for the whole residue of the term.

Remainder upon certain estates for life.

SEC. 19. When a remainder shall be created upon any such life estate, and more than two persons shall be named as the persons during whose lives the estate shall continue, the remainder shall take

When remainder to take effect in certain cases.

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Contingent remainder on a term for years.

effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

SEC. 20. A contingent remainder shall not be created on a term for years, unless the nature of the contingency upon which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

Remainder of estates for life.

SEC. 21. No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Meaning of "heirs" and "issue" in certain remainders.

2 Paige, 30.

SEC. 22. When a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue, shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Limitations on chattels real.

SEC. 23. All the provisions in this chapter contained relative to future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years, shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

Remainders, how created.

SEC. 24. Subject to the rules established in the preceding sections of this chapter, a freehold estate as well as a chattel real may be created to commence at a future day, an estate for life may be created in a term of years, and a remainder limited thereon.

Two or more future estates.

SEC. 25. Two or more future estates may also be created to take effect in the alternative, so that if the first in order should fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Certain future estates not to be void.

SEC. 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

Remainder upon a contingency.

SEC. 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such a limitation would have by law.

Heirs of tenant for life; when to take as purchasers. [Rule in Shelley's case, see 4 Kent's Com., 224, &c.]

SEC. 28. When a remainder shall be limited to the heirs, or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them.

Construction of certain remainders.

SEC. 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency, defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

Posthumous children.

SEC. 30. When a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take, in the same manner as if born before the death of the parents.

Ib.

SEC. 31. A future estate depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Expectant estates not to be defeated, &c.

SEC. 32. No expectant estate can be defeated or barred by any

alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizen, forfeiture, surrender, merger or otherwise.

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SEC. 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means which the party creating such estate shall, in the creation thereof, have provided or authorized; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

When expectant estate may be defeated.

SEC. 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect in the same manner, and to the same extent, as if the precedent estate had continued to the same period.

Remainder not to be defeated in certain cases.

SEC. 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

Qualities of expectant estates.

SEC. 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this chapter, in relation to future estates in lands.

Future profits of lands.

SEC. 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

Accumulation of the profits of lands.
4 Paige, 328.

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority:

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

SEC. 38. If in either of the cases mentioned in the last preceding section, the direction for such accumulation shall be for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority; and all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Other directions, when void in part, when wholly void.

SEC. 39. When such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

Application of profits, &c., to support of infants.

SEC. 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the person presumptively entitled to the next eventual estate.

Who entitled to profits of land in certain cases.

SEC. 41. The delivery of the grant, where an expectant estate is created by grant; and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

Expectant estates, when created.

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CHAPTER 63.**

Certain expectant estates abolished.

Estates in severalty, joint tenancy and in common.

Certain grants to create estates in common.
16 Mass., 61.

Application of last section.

Nominal conditions annexed to grant.

SEC. 42. All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

SEC. 43. Estates, in respect to the number and connexion of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

SEC. 44. All grants and devises of lands, made to two or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.

SEC. 45. The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

SEC. 46. When any conditions annexed to a grant or conveyance of lands are merely nominal, and evince no intention of actual and substantial benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded, and a failure to perform the same shall in no case operate as a forfeiture of the lands conveyed subject thereto.

CHAPTER 63.

OF USES AND TRUSTS.

Certain uses and trusts abolished.

Executed uses confirmed.

Right to possession of land creates legal ownership.

4 Paige, 403.

Active trusts not affected by last section.
4 Paige, 352.

Trustees of estate for use of another take no interest.

[Sec § 15.]

Preceding sections qualified.

SECTION 1. Uses and trusts, except as authorized and modified in this chapter, are abolished, and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this title.

SEC. 2. Every estate which is now held as an use, executed under the laws of this state as they formerly existed, is confirmed as a legal estate.

SEC. 3. Every person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest.

SEC. 4. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

SEC. 5. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of, or in trust for, such person: and if made to one or more persons, in trust for, or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

SEC. 6. The preceding sections of this chapter, shall not extend to



trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

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3 Paige, 390. 16
J. R., 197. 5
John. Ch. R., 1.

SEC. 7. When a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

Grant to one, for money paid by another, no trust to result.

SEC. 8. Every such conveyance shall be presumed fraudulent, as against the creditors of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

Except for benefit of creditors.

SEC. 9. The preceding seventh section shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed, with moneys belonging to another person.

Section seven qualified.

SEC. 10. No implied or resulting trust shall be alledged or established to defeat or prejudice the title of a purchase, (*purchaser*,) for a valuable consideration, and without notice of such trust.

Purchasers protected.

SEC. 11. Express trusts may be created for any or either of the following purposes:

For what purposes express trusts may be created.

1. To sell lands for the benefit of creditors:
2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon:
3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter:
4. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter:
5. For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title.

11 Wend., 240.

SEC. 12. A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

Certain devises in trust, to be deemed powers.

SEC. 13. When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity, to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

Profits of land liable to creditors in certain cases.

SEC. 14. When an express trust shall be created for any purpose not enumerated in the preceding sections of this chapter, no estate shall vest in the trustees; but the trust, if directing or authorizing the

Other express trusts to be powers in trust.
8 Wend., 661.

- TITLE XIV.
CHAPTER 63.** performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.
- Land to descend, &c., to persons entitled.** SEC. 15. In every case where the trust shall be valid as a power, the land to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.
- Trustees of express trusts to have whole estate.** SEC. 16. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.
- Last section qualified.** SEC. 17. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates shall belong, in the event of the failure or termination of the trust, nor shall it prevent him from granting or devising such lands subject to the execution of the trust; and every such grantee shall have a legal estate in the lands, as against all persons except the trustees and those lawfully claiming under them.
- Interest remaining in grantor of express trust.** SEC. 18. When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in, or revert to the person creating the trust, or his heirs as a legal estate.
- Powers over trust, of party interested.** SEC. 19. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.
- Effect of omitting trust in conveyance.** SEC. 20. When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.
- Certain sales, &c., by trustees, void.** SEC. 21. When the trust shall be expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void.
- Other persons not to be affected by misconduct of trustees.** SEC. 22. No person who shall actually and in good faith make any payment to a trustee, which the trustee as such is authorized to receive, shall be responsible for the application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication of such payment by the trustee.
- When estate of trustees to cease. 4 Paige, 403.** SEC. 23. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustee shall also cease.
- On death of surviving trustee, trust to be executed under direction of the court of chancery.** SEC. 24. Upon the death of the surviving trustee of an express trust, the trust shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.
- SEC. 25. Upon the petition of any trustee of an express trust, the

court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the persons interested in the execution of the trust may require.

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When and how
trustees may re-
sign.
3 Paige, 420.

When and how
trustees may be
removed.

Sec. 26. Upon the petition or bill of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

Sec. 27. The chancellor shall have full power to appoint a new trustee, in the place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers, under its direction.

Places of trustees resigning or removed, how supplied.

CHAPTER 64.

OF POWERS.

SECTION 1. Powers, except as authorized and provided for in this chapter, are abolished; and from the time this chapter shall be in force, the creation, construction and execution of powers, shall be governed by the provisions herein contained.

Powers, except as provided for in this chapter, abolished.

Sec. 2. A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power, might himself lawfully perform.

Definition of power.

Sec. 3. No person is capable in law of granting a power, who is not at the same time, capable of aliening some interest in the lands to which the power relates.

Who incapable of granting a power.

Sec. 4. Powers, as authorized in this chapter, are general or special, and beneficial or in trust.

Division of powers.

Sec. 5. A power is general, when it authorizes the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

Definition of general powers.

Sec. 6. A power is special,

Definition of special powers.

1. When the person or class of persons, to whom the disposition of the lands under the power is to be made, are designated:

2. When the power authorizes the alienation, by means of a conveyance, will or charge, of a particular estate or interest less than a fee.

Sec. 7. A general or special power is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution.

Beneficial powers.

Sec. 8. A general and beneficial power may be given to a married woman, to dispose during the marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

Powers to married women.

Sec. 9. When an absolute power of disposition, not accompanied

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Estate of tenant for life, &c.,¹ when changed into a fee.

Certain powers create a fee, &c.

1b.

Effect of power to devise the inheritance in certain cases.

What powers to be deemed absolute.

Power to revoke.

Special and beneficial powers, who may take.

Power to make leases by tenant for life.

Release of such power.

Mortgage by party having power to lease, &c.

Effect of mortgage on power.

Future beneficial powers.

Beneficial powers liable to creditors.

by any trust, shall be given to the owner of a particular estate, for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not be sold for the satisfaction of debts.

SEC. 10. When a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors and purchasers.

SEC. 11. In all cases where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

SEC. 12. When a general and beneficial power to devise the inheritance, shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning, and subject to the provisions of the three last preceding sections.

SEC. 13. Every power of disposition shall be deemed absolute, by means of which the grantee is enabled, in his life time, to dispose of the entire fee for his own benefit.

SEC. 14. When the grantor in any conveyance, shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

SEC. 15. A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the consent of her husband, of any estate less than a fee, belonging to her, in the lands to which the power relates :

2. To a tenant for life of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life.

SEC. 16. The power of a tenant for life to make leases, is not assignable as a separate interest, and will pass, unless specially excepted, by any conveyance of such estate ; and if specially excepted in any such conveyance, it is extinguished.

SEC. 17. Such power may be released by the tenant to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

SEC. 18. A mortgage executed by a tenant for life having a power to make leases, or by a married woman by virtue of any beneficial power, does not extinguish or suspend the power ; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

SEC. 19. The effects of such a lien by mortgage on the power are,
1. That the mortgagee is entitled, in equity, to an execution of the power, so far as the satisfaction of his debt may require :

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage, in the same manner as if in terms embraced therein.

SEC. 20. No beneficial power, general or special, hereafter to be created, other than such as are enumerated and defined in the preceding section (*sections*) of this chapter, shall be valid.

SEC. 21. Every special and beneficial power is liable in equity to the claims of creditors, in the same manner as other interests that

cannot be reached by an execution at law, and the execution of the power may be decreed for the benefit of the creditors entitled.

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SEC. 22. A general power is in trust when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to arise from the alienation of the lands, according to the power.

General powers,
when in trust.

SEC. 23. A special power is in trust,

Special powers,
when in trust.

1. When the disposition which it authorizes, is limited to be made to any particular person or class of persons, other than the grantee of such power :

2. When any person or class of persons, other than the grantee, is entitled to any benefit from the disposition or charge authorized by the power.

SEC. 24. Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity for the benefit of the parties interested.

Trust powers,
imperative.

SEC. 25. A trust power does not ~~come~~ to be imperative when the grantee has the right to select any, and exclude others of the persons designated as the objects of the trust.

Effect of right of
selection.

SEC. 26. When a disposition under a power is directed to be made to, or among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion.

Construction of
powers in certain
cases.

SEC. 27. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the others.

Ib.

SEC. 28. If the trustee of a power, with the right of selection, shall die leaving the power unexecuted, its execution shall be decreed in the court of chancery for the benefit equally of all the persons designated as objects of the trust.

When chancery
to execute pow-
ers.

SEC. 29. When a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution shall devolve on the court of chancery.

Ib.

SEC. 30. The provisions contained in the next preceding chapter, from section twenty-two to section twenty-seven, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

Application of
certain sections
of preceding
chapter

SEC. 31. The execution, in whole or in part, of any trust power, may be decreed in chancery for the benefit of the creditors or assignees of any person entitled as one of the objects of the trust to compel its execution, when the interest of the objects of such trust is assignable.

Execution of
trust power
when compelled
by creditors, &c.

SEC. 32. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power or interest is vested, under any general assignment of the estate and effects of such person for the benefit of creditors, made pursuant to law.

Beneficial pow-
ers, &c., how af-
fected by cer-
tain assignments.

SEC. 33. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another ; and every power so reserved, shall be subject to the provi-

Reservation of
powers in con-
veyances.

**TITLE XIV.
CHAPTER 64.**

How powers to be granted.

Recording powers, effect of.

When powers irrevocable.

In whom powers may be vested, &c.

Married women.

Execution of power by survivors.
2 Paige, 197.

How executed.

Instruments deemed conveyances.

Execution of power to dispose by devise.

Execution of power to dispose by grant.

How grant to be acknowledged by married women.

Directions by grantor.

sions of this chapter, in the same manner as if granted to another.

SEC. 34. A power may be granted,

1. By a suitable clause contained in the conveyance of some estate, in the lands to which the power relates :

2. By a devise contained in a last will and testament.

SEC. 35. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith, and without notice, of or from any person having an estate in such lands, only from the time the instrument containing the power shall be recorded ; but as against all other persons, the power shall be a lien from the time the instrument in which it is contained shall take effect.

SEC. 36. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is reserved or granted in the instrument creating the power.

SEC. 37. A power may be vested in any person capable in law of holding lands, but cannot be executed by any person not capable of aliening lands holden by such person, except in the single case mentioned in the next section.

SEC. 38. A married woman may execute a power during her marriage, by grant or devise, as may be authorized by the power, without the concurrence of her husband, unless by the terms of the power, its execution by her during marriage, is expressly or impliedly prohibited ; but no power vested in a married woman during her infancy, can be exercised by her, until she attains her full age.

SEC. 39. When a power is vested in several persons, all must unite in its execution ; but if previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors.

SEC. 40. No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

SEC. 41. Every instrument, except a will, made in execution of a power, whether it be a power of revocation or otherwise, shall be deemed a conveyance within the meaning and subject to the provisions of the next succeeding chapter.

SEC. 42. When a power of disposition is confined to a disposition by devise or will, the instrument must be a will duly executed according to the provisions of law relating to wills of real and personal estate.

SEC. 43. When a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party in whom the power is vested.

SEC. 44. If a married woman execute a power by grant, such grant shall be acknowledged by her on a private examination in the manner prescribed in the next succeeding chapter, in relation to conveyances by married women, and shall not be valid unless so acknowledged.

SEC. 45. When the grantor of a power shall have directed or authorized it to be executed by an instrument not sufficient to pass the estate, such power shall not be void, but its execution shall be governed by the rules prescribed in this chapter.

SEC. 46. When the grantor shall have directed any formalities to be used in the execution of a power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

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1b.

SEC. 47. When the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power.

Nominal conditions.

SEC. 48. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time and conditions of its execution shall be observed, subject to the power of a court of chancery to supply a defective execution, in the cases hereinafter provided.

When directions of grantor to be observed.

SEC. 49. When the consent of a third person to the execution of the power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon; and in the first case, the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of lands.

Consent of third person to execution of power.

SEC. 50. No disposition, by virtue of a power, shall be void in law or equity, on the ground that it is more extensive than was authorized by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be good and valid.

Certain dispositions not void.

SEC. 51. Every instrument executed by the grantee of a power, conveying an estate or creating a charge which such grantee is authorized by the power to convey or create, but which he would have no right to convey or create, unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

Omission to recite power.

SEC. 52. Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

Fraud.

SEC. 53. Lands embraced in a power to devise, shall pass by a will, purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, shall appear expressly, or by necessary implication.

Power to devise &c.

SEC. 54. Every estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust with a right of selection, shall be deemed an advancement to such descendant, to the same extent, and under the same circumstances that a gift of real or personal estate would be deemed an advancement.

Certain estates to be advancements.

SEC. 55. The period during which the absolute right of alienation may be suspended by any instrument in execution of a power, shall be computed from the time of the creation of the power, and not from the date of such instrument.

Computation of time of suspension.

SEC. 56. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which such person would not have been capable of taking, under the instrument by which the power was granted.

Who may not take under powers.

SEC. 57. When a married woman, entitled to an estate in fee, shall be authorized by a power to dispose of such estate during her mar-

Married women, their authority, &c.

**TITLE XIV.
CHAPTER 65.**

Defective execu-
tions.

Ib.

Powers to sell on
mortgages.

Application of
this chapter.

Terms "grantor
of a power," and
"grantee of a
power," defined.

riage, she may, by virtue of such power, create any estate which she might create if unmarried.

SEC. 58. When the execution of a power in trust shall be defective, in whole or in part, under the provisions of this chapter, its proper execution may be decreed in equity, in favor of the persons designated as the objects of the trust.

SEC. 59. Purchasers for a valuable consideration, claiming under a defective execution of any power, shall be entitled to the same relief in equity, as similar purchasers claiming under a defective conveyance from an actual owner.

SEC. 60. When a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who by assignment or otherwise shall become entitled to the money so secured to be paid.

SEC. 61. The provisions of this chapter shall not extend to a simple power of attorney, to convey lands in the name, and for the benefit of the owner.

SEC. 62. The term "grantor of a power," is used in this chapter as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant, devise, or reservation.

CHAPTER 65.

OF ALIENATION BY DEED, AND THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

Conveyance of
land may be
made by deed.

1840, p. 166.

Conveyance by
husband and
wife.
7 Mass., 19, 291.
3 Pick., 521. 4
Mason, 45.

Form of deed.
2 Pick., 143.

Effects of certain
conveyances.

Covenants in
conveyances.

Covenants in
mortgages.

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

SEC. 3. A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

SEC. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

SEC. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

SEC. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no express covenant for such payment contained in the

mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

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Sec. 7. No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Conveyance of land adversely possessed.

Sec. 8. Deeds executed within this state, of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public, justice of the peace or master in chancery within the state, and the officer taking such acknowledgment, shall endorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

Execution and acknowledgment of deed.

1839, p. 219,
1840, p. 166.

Sec. 9. If any such deed shall be executed in any other state, territory or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for such purpose.

Deeds executed in other states.

1840, p. 166.

Sec. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under [the] seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district.

How acknowledgment authenticated.

1840, p. 165.
1843, p. 6.

Sec. 11. If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner or consul of the United States, appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

Deeds executed in foreign country.

Sec. 12. When any married woman residing in this state, shall join with her husband in a deed of conveyance of real estate, situate within this state, the acknowledgment of the wife shall be taken separately and apart from her husband; and she shall acknowledge that she executed such deed freely, and without any fear or compulsion from any one.

Acknowledgment by married women residing in this state.

1840, p. 167, § 4.

Sec. 13. When any married woman not residing in this state, shall join with her husband in any conveyance of real estate situated within this state, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

Conveyance by married women residing out of this state.

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Proof of execution, &c.

In case of death of subscribing witnesses.

Proceedings on refusal of grant or residing in this state, to acknowledge deed.

Ib.

When execution may be proved before court of record, in case of death, &c.

Subpœnas for witnesses.

Punishment for refusing to appear or to answer, &c.

Filing copy of deed with register, &c., effect.

When effect of filing to continue.

SEC. 14. When any grantor shall die, or depart from, or reside out of this state, not having acknowledged his deed, the due execution thereof may be proved by any competent subscribing witness thereto, before any court of record in this state.

SEC. 15. If all the subscribing witnesses to such deed shall also be dead, or out of this state, the same may be proved before any court of record in this state, by proving the hand writing of the grantor, and of any subscribing witness thereto.

SEC. 16. If any grantor residing in this state, shall refuse to acknowledge his deed, the grantee or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

SEC. 17. At the time mentioned in such summons, or at any time to which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the justice, he shall certify the same thereon, and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

SEC. 18. If any grantor residing in this state, shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead, or out of the state, it may be proved before any court of record in this state, by proving the handwriting of the grantor, or of any subscribing witness; the said court first summoning the grantor for the purpose, in the manner before provided in this chapter.

SEC. 19. The court or justice before whom any deed may be presented to be proved, as provided in the preceding sections, may issue subpœnas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of such deed; which subpœnas may be served in any part of this state.

SEC. 20. Every person, who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer on oath touching the matters aforesaid, shall be liable to the injured party in the sum of one hundred dollars damages, and for such further damages as such party may sustain thereby; and may also be committed to prison as for a contempt by the court or justice who issued such subpœna, there to remain until he shall submit to answer upon oath as aforesaid.

SEC. 21. Any person interested in a deed that is not acknowledged, may, at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time be duly proved and recorded.

SEC. 22. If, at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execu-



tion of the deed shall be pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed shall within that time be duly proved and recorded.

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Sec. 23. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and, in the cases where the same is necessary, the certificate required by the eleventh (*tenth*) section of this chapter, shall entitle such deed, with the certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the lands lie.

Certificate to entitle deed to be recorded.

Sec. 24. Every register of deeds shall keep an entry book of deeds, and an entry book of mortgages, each page of which shall be divided into six columns, with titles or heads to the respective columns, in the following form, to wit:

Entry books of deeds and mortgages to be kept by register.

Date of reception.	Grantors.	Grantees.	Township where the lands lie.	To whom delivered after being recorded.	Fees received.
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Sec. 25. In the entry book of deeds the register shall enter all deeds of conveyance absolute in their terms, and not intended as mortgages or securities, and all copies left as cautions, and in the entry book of mortgages he shall enter all mortgages and other deeds intended as securities, and all assignments of any such mortgages or securities; noting in such books the day, hour and minute of the reception, and the other particulars in the appropriate columns, in the order in which such instruments are respectively received; and every such instrument shall be considered as recorded at the time so noted.

Entries in such books, how made.

Sec. 26. Different sets of books shall be provided by the registers of deeds of the several counties, for the recording of deeds and mortgages; in one of which sets all deeds required by the preceding section to be entered in the entry book of deeds, shall be recorded at full length, with the certificates of acknowledgment or proof of the execution thereof, and in the other, all such instruments as are required to be entered in the entry book of mortgages, shall in like manner be recorded.

Recording of deeds and mortgages.

Sec. 27. The register shall certify upon every instrument recorded by him, the time when it was received, and a reference to the book and page where it is recorded.

Certificate of recording.

Sec. 28. Every register of deeds shall also keep a proper general index to each of the sets of books, in which he shall enter, alphabetically, the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

Indexes.

Sec. 29. Every conveyance of real estate within this state, hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

Conveyance not recorded, void, as against subsequent purchaser in good faith, &c. 6 Wend. 213. 8 do. 620.

Sec. 30. Deeds of pews or slips in any church, may be recorded by the clerk of the township in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally or-

Recording deeds of pews and slips in churches.

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Effect of certain conveyances and other instruments as evidence.

When deed not defeated by defeasance.

5 Pick., 181.

Effect of recording assignment of mortgage.

Definition of term "purchaser," as used in this chapter.

Definition of term "conveyance," as used in this chapter.

1 Wend., 485.

Construction of preceding section, letters of attorney, &c.

How letters of attorney revoked

Transcribing records on division &c., of county.

ganized; and such clerks shall receive the same fees as the register of deeds is entitled to for similar services.

SEC. 31. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this state without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

SEC. 32. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the registry of deeds of the county where the lands lie.

SEC. 33. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them to the mortgagee.

SEC. 34. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate.

SEC. 35. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands.

SEC. 36. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded in the registry of deeds of any county in which the lands to which such power or contract relates, may be situated; and when so acknowledged or proved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner, and with the like effect, as a conveyance recorded in such county.

SEC. 37. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

SEC. 38. When a new county shall be organized, in whole or in part from an organized county, or from territory attached to such organized county for judicial purposes, all the records of deeds or other instruments relating to real estate in such new county, may be transcribed into the proper books by the register of deeds of such new county; which records so transcribed, shall have the same effect in all respects as original records, and the register shall be paid for

transcribing the same, such sum as the board of supervisors of his county may deem just and reasonable.

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SEC. 39. A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals as are or may be provided for by law.

Scroll used as a seal.

1840, p. 167, § 3.

SEC. 40. All conveyances of real estate heretofore made and acknowledged or proved in accordance with the laws of this state, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Effect of deeds, &c., acknowledged according to law in force. 1840, p. 167, § 9.

SEC. 41. Any mortgage that has been, or may hereafter be recorded may be discharged by an entry in the margin of the record thereof signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

How mortgage may be discharged.

SEC. 42. Any mortgage shall also be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as herein before prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

SEC. 43. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage made by the register upon the record thereof.

Certificate, &c., to be recorded. 1839, p. 219.

SEC. 44. If any mortgagee or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge, or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action on the case.

Liability of mortgagee, &c., for neglect to discharge mortgage.

1839, p. 219.

CHAPTER 66.

OF ESTATES IN DOWER, BY THE CURTESY, AND GENERAL PROVISIONS CONCERNING REAL ESTATE.

Estates in Dower.

SECTION 1. The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of one-third part of all

Widow entitled to dower. 10 Wend. 420. 11 do 392. 1 Paige. 634.

**TITLE XIV.
CHAPTER 66.**

Dower in case of
exchange of
land by husband.

the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

SEC. 2. If a husband seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Mortgaged land.

SEC. 3. When a person seized of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

Mortgage to secure purchase money.

SEC. 4. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

When widow entitled to interest after sale on mortgage.

SEC. 5. Where, in either of the cases mentioned in the two last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life, as dower.

3 Pick., 475.
15 Mass., 278.

When widow entitled to dower of residue after deducting amount paid on mortgage.

SEC. 6. If, in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue after such deduction.

Dower in lands aliened by husband, how estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his life time, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so aliened.

When dower may be assigned by probate court.

SEC. 8. When a widow is entitled to dower in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon application of the widow or any other person interested in the lands; notice of which application shall be given to such heirs, devisees or other persons, in such manner as the judge of probate shall direct.

9 Mass., 9.

Warrant for assignment of dower.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

SEC. 10. The commissioners shall be sworn before a judge or justice

of the peace, to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof recorded in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed on appeal; and one-half of the cost of such proceedings shall be paid by the widow, and the other half by the adverse party.

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Commissioners to be sworn, &c.; recording assignment—costs.

SEC. 11. When the estate out of which dower is to be assigned, consists of a mill, or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

When estate consists of mill, &c., how dower assigned.

SEC. 12. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

When widow may occupy with heirs.

SEC. 13. A married woman residing within this state, may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner.

How dower may be barred.
7 Mass., 14.
3 Mason, 347.
8 Pick., 536.
3 Greenl., 63.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband,

1b.

SEC. 15. Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

1b.

2 Paige, 559.

SEC. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

1b.

SEC. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband; but she shall not be entitled to both.

Election in case of jointure.

SEC. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provisions (*provision*) so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

Election in case of provision by will.

SEC. 19. When a widow shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have

When widow deemed to have elected, to take jointure, &c.

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When widow to
be endowed
anew.

elected to take such jointure, devise or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

SEC. 20. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure or other provision had not been made.

Woman being an
alien, or residing
out of state, to
have dower.

SEC. 21. A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the state, shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

Woman not to
commit waste ;
to keep houses,
&c., in repair.

SEC. 22. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same ; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

How long widow
may remain in
dwelling house,
and have suste-
nance.

SEC. 23. A widow may remain in the dwelling house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of his estate for one year.

When to recover
damages.

SEC. 24. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

Measure of da-
mages, &c.

SEC. 25. Such damages shall be one-third part of the annual value of the mense profits of the lands in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death ; and in suits against other persons from the time of her demanding her dower of such persons.

Not on improve-
ments.

SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Damages against
heir alienating
land, &c.

SEC. 27. When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole ; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Claim, when bar-
red by assign-
ment of dower.

SEC. 28. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

SEC. 29. When a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

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CHAPTER 68.

Collusive recovery not to prejudice infant heirs, &c.

Estates by the Curtesy.

SEC. 30. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy: Provided, that if the wife, at her death, shall leave issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

When husband to hold as tenant by the curtesy.

General Provisions.

SEC. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Liability of person in possession of land out of which rent is reserved.
17 Mass., 440.

SEC. 32. Such rent may be recovered in an action of debt or assumpsit, and the deed of demise, or other instrument in writing, if there be any showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

How rent recovered.

SEC. 33. Nothing contained in the preceding sections shall deprive landlords of any legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

Construction of preceding sections.

SEC. 34. All estates at will or by sufferance, may be determined by either party, by three months' notice given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Determination of estates at will, and by sufferance.

17 Mass., 282.
1 Pick., 43.
2 Pick., 70.
6 Pick., 339.

SEC. 35. Any alien may acquire and hold lands, or any right thereto or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend, in like manner, and with like effect, as if such alien were a native citizen of this state, or of the United States.

Aliens may hold land, &c.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected, by reason of the alienage of any person from or through whom such title may have been derived.

Title to lands heretofore conveyed, not to be questioned on account of alienage.

SEC. 37. A person seized of an estate in remainder or reversion, may maintain an action of trespass on the case, for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Remainder-man &c., may sue for injuries to inheritance.

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When joint tenant may maintain action against co-tenant.

SEC. 38. One joint tenant or tenant in common, and his executors or administrators, may maintain an action for money had and received, against his co-tenant, for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

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CHAPTER 67.

OF TITLE TO REAL PROPERTY BY DESCENT.

SECTION 1. When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend subject to his debts, in manner following:

How land, &c.,
to descend.

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation:

2. If he shall leave no issue, his estate shall descend to his widow during her natural life time, and after her decease, to his father; and if he shall leave no issue or widow, his estate shall descend to his father:

3. If he shall leave no issue, nor widow, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation; provided that if he shall leave a mother also, she shall take an equal share with his brothers and sisters:

4. If the intestate shall leave no issue, nor widow nor father, and no brother nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters:

5. If the intestate shall leave no issue, nor widow, and no father, mother, brother nor sister, his estate shall descend to his next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: provided however,

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation:

7. If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child by inheritance from his said parent, shall descend to all the issue of other children of the same parent, and if all the said issue are in the same degree of kindred to said child, they shall share

12 Mass., 490.

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the said estate equally; otherwise they shall take according to the right of representation :

8. If the intestate shall leave a widow, and no kindred, his estate shall descend to such widow :

9. If the intestate shall leave no widow nor kindred, his estate shall escheat to the people of this state, for the use of the primary school fund.

Illegitimate children to inherit from mother.

SEC. 2. Every illegitimate child shall be considered as an heir of his mother and shall inherit her estate, in like manner as if born in lawful wedlock ; but shall not be allowed to claim as representing his mother, any part of the estate of any of her kindred, either lineal or collateral.

Estate of illegitimate child, to whom to descend.
4 Pick., 93.

SEC. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother ; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

When child to be considered illegitimate.

SEC. 4. When, after the birth of an illegitimate child, his parents shall intermarry, and his father shall, after the marriage, acknowledge him as his child, such child shall be considered as legitimate to all intents and purposes.

Computation of degrees of kindred. Half blood.

SEC. 5. The degrees of kindred shall be computed according to the rules of the civil law ; and kindred of the half blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

1 Paige, 562.

Effect of advancement.

SEC. 6. Any estate, real or personal, that may have been given by the intestate in his life time, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

1 Pick., 161.

When heir advanced to be excluded from distribution.

SEC. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Advancement, how estimated.

SEC. 8. If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided ; and if it be in personal estate, it shall be considered as part of the personal estate ; and if in either case, it shall exceed the share of real or of personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs who are in the same degree with him.

16 Mass., 200.

When gifts, &c., to be deemed advancement.
4 Pick., 21.
5 do 527.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Value of advancement, how ascertained.

SEC. 10. If the value of the estate so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or

in the acknowledgment of the party receiving it, it shall be considered as of that value, in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

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SEC. 11. If any child, or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, in like manner as if the advancement had been made directly to them.

In case of death of heir advanced, amount to be allowed by representatives.

SEC. 12. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower, nor shall the same affect any limitation of an estate by deed or will.

Construction of this chapter.

SEC. 13. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living. Posthumous children are considered as living at the death of their parents.

Inheritance, &c., by right of representation.

TITLE XVI.

CHAPTER 68.

OF WILLS OF REAL AND PERSONAL ESTATE.

Who may devise
lands, &c.

SECTION 1. Every person of full age and sound mind, being seized in his own right of any lands, or of any right thereto, or entitled to any interest therein, descendible to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by the will, shall descend as the estate of an intestate, being chargeable, in both cases, with the payment of all his debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same: Provided, that no such will, alteration or revocation shall be of any validity without the consent of the husband of such married woman, in writing, annexed to such will, alteration or revocation, and attested and subscribed, and to be proven and recorded in like manner as a last will and testament is required to be witnessed, proven and recorded.

Construction of
devise.

SEC. 2. Every devise of land in any will hereafter made, shall be construed to convey all the intestate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate.

Estate in lands
acquired after
making will.
5 Pick., 112.
6 Mass., 129.

SEC. 3. Any estate, right or interest in lands, acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

Who may be-
queath personal
estate.

SEC. 4. Every person of full age and sound mind, may, by his last will and testament, in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto, and interest therein, and all such estate, not disposed of by the will shall be administered as intestate estate.

1 Pick., 239.

How wills to be
executed.

SEC. 5. No will made within this state, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

5 Mass., 229.
12 do 353.
14 do 421.
9 Pick., 350.
3 do 374.
* Greenl., 220.Nuncupative
wills.

SEC. 6. Nothing contained herein shall affect the validity of a nuncupative will, in which the value of the estate bequeathed shall not exceed three hundred dollars, provided the same shall be proved by two competent witnesses; nor prevent any soldier, being in actual

military service, nor any mariner, being on shipboard, from disposing of his wages and other personal estate by a nuncupative will, as he might heretofore have done.

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2 Greenl., 298.

SEC. 7. All beneficial devises, legacies and gifts whatsoever, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

When legacy, &c., to subscribing witness void.

SEC. 8. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to, and out of the parts devised or bequeathed to them.

When share of estate to be saved to subscribing witness.

SEC. 9. No will nor any part thereof shall be revoked, unless by burning, tearing, canceling or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing, signed, attested and subscribed in the manner provided in this chapter for the execution of a will; excepting only that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Revocation of wills.

15 Mass., 115.
4 Greenl., 341.

SEC. 10. Any will in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lived (*lives;*) and the judge of probate shall receive and safely keep such will and give a certificate of the deposit thereof.

When will may be deposited with judge of probate.

SEC. 11. Such will shall, during the life time of the testator, be delivered only to himself, or to some person authorized by him by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

How such will kept and disposed of.

SEC. 12. The judge of probate shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the will; or if the jurisdiction of the case belong to any other court, such will shall be delivered to the executor, or to some other trusty person, interested in the provisions of the same, to be presented for probate in such other court.

Judge of probate to give notice of his possession of will.

SEC. 13. Every person other than the judge of probate, having the custody of any will, shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Others having custody of will, to deliver same in 30 days.

SEC. 14. Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate

Within what time executor to present will to probate court.

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court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate; and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Liability for neglect of duties in certain cases.

SEC. 15. Every person who shall neglect to perform any of the duties required in the two last preceding sections, without reasonable cause, shall be liable to each and every person interested in such will, in the sum of ten dollars damages for each and every month he shall so neglect, after the thirty days above mentioned, to be recovered in an action on the case with costs.

When person having custody of will may be committed for neglect to deliver same to probate court.
6 Greenl., 274.
4 Maass., 137.
4 Pick., 33.

SEC. 16. If any person, having the custody of any will, after the death of the testator, shall, without reasonable cause neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

Notice of time and place of proving will.

SEC. 17. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this state, as the judge shall direct, three weeks successively, previous to the time appointed; and no will shall be proved until notice shall be given as herein provided.

When probate may be granted on testimony of one witness.

SEC. 18. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

When other witnesses may be admitted to prove will.

SEC. 19. If none of the subscribing witnesses shall reside in this state, at the time appointed for proving the will, the court may in its discretion, admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution of the will, may admit proof of the hand writing of the testator and of the subscribing witnesses.

Effect of proof and allowance of will in probate court.

SEC. 20. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court as provided in this chapter, or on appeal, in the circuit court or supreme court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Wills proved in other states, &c.

4 Greenl., 134.

SEC. 21. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed and recorded in the probate court of any county, in which the testator shall have real and personal estate on which such will may operate, in the manner mentioned in the following sections.

When copy of will and probate produced, notice to be given.

SEC. 22. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a

time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

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SEC. 23. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this state, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

If will allowed,
copy to be filed
and recorded.

SEC. 24. When any will shall be allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration with the will annexed; and such letters testamentary or letters of administration shall extend to all the estate of the testator in this state; and such estate, after payment of his just debts and expenses of administration, shall be disposed of according to such will so far as such will may operate upon it; and the residue shall be disposed of as is provided by law in cases of estates in this state, belonging to persons who are inhabitants of any other state or country.

Letters testa-
mentary, &c., on
such will.

SEC. 25. When any child shall be born after the making of his father's will, and no provision shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate; and the share of such child shall be assigned to him as provided by law in case of intestate estates, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

Provision for
children born af-
ter making of
will.

SEC. 26. When any testator shall omit to provide in his will, for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator, as if he had died intestate, to be assigned as provided in the preceding section.

When provision
for child omitted
by mistake, &c.

SEC. 27. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child omitted in the will, as herein before mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary, shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in which case, such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

From what es-
tate provision to
be taken.

SEC. 28. When a devise or legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done, if he had survived the testator; unless a different disposition shall be made or directed by the will.

When the issue
of deceased le-
gatee, &c., to
take estate.

SEC. 29. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts, and the expenses of administering (*administering*) his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or

Estate of testa-
tor liable for
payment of
debts, &c., al-
lowance for
maintenance of
widow, &c.

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either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

Estate appropriated by will to be applied to payment of debts &c.

SEC. 30. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

When provision insufficient, &c.

SEC. 31. If the provision made by the will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate given by will, liable to payment of debts, &c.—when certain devisees, &c., to be exempted.

SEC. 32. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Estates given by will, and liable for payment of debts, &c.—when retained by executor until assigned.

SEC. 33. When the estate given by any will, shall be liable for the payment of debts and expenses as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child not provided for in the will as herein before provided, the executor shall have a right to retain possession of the same, until such liability shall be settled by order of the probate court, and until the devises and legacies so liable, shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court, to have such liability settled, and his devise or legacy assigned to him.

When devisee or legatee to hold subject to liability to contribute, &c.

SEC. 34. All the devisees and legatees, who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will before such liability shall be settled by the probate court, shall hold the same subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child, or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this chapter, shall be liable to contribute, in like manner as the devisees or legatees.

When liable for loss in case of insolvency of person liable to contribute.

SEC. 35. If any [of the] persons liable to contribute, according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute, shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

Settlement of liabilities by decree of probate court.

SEC. 36. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sec-

tions, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy, in any proper action or complaint in law or equity.

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SEC. 37. Every will, when proved as provided in this chapter, shall have a certificate of such proof endorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this state, without further proof.

Wills and copies,
how made evi-
dence.

SEC. 38. An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Attested copy to
be recorded in
registry of deeds.

SEC. 39. The word "executor," in this and the subsequent chapters, shall be construed to include an administrator with the will annexed.

Construction of
the term "execu-
tor."

TITLE XVII.

OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS.

- Chapter 69. Of Letters Testamentary and other Proceedings on the Probate of a Will.
- Chapter 70. Of the Administration and Distribution of Estates of Intestates.
- Chapter 71. Of the Inventory and Collection of the Effects of Deceased Persons.
- Chapter 72. Of the Payment of Debts and Legacies of Deceased Persons.
- Chapter 73. Of Rendering Accounts by Executors and Administrators.
- Chapter 74. Of the Partition and Distribution of Estates.
- Chapter 75. Of Probate Bonds, and the Prosecution of them.
- Chapter 76. Of the Conveyance of Real Estate by Executors and Administrators in certain cases.

CHAPTER 69.

OF LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

Letters, testamentary.

SECTION 1. When a will shall have been duly proved and allowed, the probate court shall issue letters testamentary thereon, to the person named executor therein if he is legally competent, and shall accept the trust and give bond as required by law.

Bond to be given by executor.

SEC. 2. Every executor, before he shall enter upon the execution of his trust, and before letters testamentary shall issue, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows:

* Pick., 536.
1 Mass., 45.

1. To make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him:

2. To administer, according to law and to the will of the testator, all his goods, chattels, rights, credits and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges, chargeable on the same, or such dividends thereon, as shall be ordered and decreed by the probate court:

3. To render a true and just account of his administration to the probate court within one year, and at any other time when required by such court:

4. To perform all orders and decrees of the probate court, by the executor to be performed in the premises.

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SEC. 3. If, however, the executor shall be residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator; and in such case he shall not be required to return an inventory.

Bond in case executor is residuary legatee.

SEC. 4. No person named as executor in any will, who shall refuse to accept the trust, or shall neglect to give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

Effect of neglect to give bond.

SEC. 5. If a person, named executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor, who will give bond, the court may commit administration of the estate with the will annexed, to such person as would have been entitled to the same, if the testator had died intestate.

When executor refuses to accept, &c., letters to be issued to others.

SEC. 6. When the person named executor in any will, is under full age at the time of proving the will, administration shall be granted with the will annexed, during the minority of the executor, unless there shall be another executor who shall accept the trust and give bond; and, in that case, the executor who shall give bond, shall have letters testamentary, and shall administer the estate, until the minor shall arrive at full age, when he may be admitted as joint executor, on giving bond according to law.

Administration in case of minority of executor.

SEC. 7. Every person who shall be appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner, and with the same conditions, as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

Administrator with the will annexed, to give bond, &c.

SEC. 8. When an unmarried woman, appointed an executrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as executrix, and her husband shall not be executor in her right.

Marriage of executrix extinguishes her authority.

SEC. 9. If an executor shall reside out of this state, or shall neglect, after due notice given by the judge of probate to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

When executor may be removed.

SEC. 10. When an executor shall die or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration with the will annexed may be granted of the estate not already administered.

17 Mass., 341.
14 do 295.

SEC. 11. When all the executors appointed in any will, shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose, as if all were authorized, and should act together; and administrators with

When remaining executor to execute trust, &c.

When all executors not authorized, those authorized may execute the will.

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CHAPTER 70.**

Executor of executor not to administer.

Separate or joint bonds may be taken.

the will annexed, shall have the same authority to perform every act, and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for every purpose.

SEC. 12. The executor of an executor shall not as such have any authority to administer the estate of the first testator; but, on the death of the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted with the will annexed, to such person as the probate court may judge proper.

SEC. 13. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them with sureties, or a joint bond from all of them with sureties.

CHAPTER 70.

**OF THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF
INTESTATES.**

Application and distribution of estates.

1842, p. 13.

SECTION 1. When any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, not exceeding in value two hundred and fifty dollars; and other personal property to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate:

2. The widow and children, constituting the family of the deceased, shall have such reasonable allowance out of the personal estate, as the probate court shall judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the dower and personal estate shall be assigned to the widow:

3. When a person shall die, leaving children under seven years of age, having no mother, or when the mother shall die before the children shall arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate, as would have been assigned to their mother if she had been living:

4. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign, for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there be no widow, the whole of such es-

tate, after the payment of the funeral charges, and expenses of administration :

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5. If the personal estate shall amount to more than one hundred and fifty dollars, and more than the allowances mentioned in the preceding subdivisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate :

6. The residue, if any, of the personal estate shall be distributed in the same proportions, and to the same persons, and for the same purposes, as prescribed for the descent and disposition of the real estate, except that the widow, if any, shall be entitled to receive the same share of such residue, as a child of such intestate would be entitled to.

SEC. 2. When any person shall die intestate, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident, at the time of his death ; if such deceased person, at the time of his death, reside in any other state or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of the (*any*) county in which there shall be estate to be administered ; and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other county.

What probate court to have jurisdiction.

5 Pick., 20, 370, 519.

SEC. 3. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same, in the following order :

Who entitled to letters of administration.

1. The widow or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust :

2. If the widow or next of kin, or the person selected by them, shall be unsuitable or incompetent, or if the widow or next of kin shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it :

3. If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

SEC. 4. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a bond to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in the case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

Bond to be given by administrator.

SEC. 5. When there shall be a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed ; and no appeal shall be allowed from the appointment of such special administrator.

When special administrator may be appointed.

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**Duties of special
administrator.**

SEC. 6. An administrator, appointed according to the provisions of the preceding section, shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

**Not to pay debts,
&c.**

SEC. 7. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

**Bond to be given
by special ad-
ministrator.**

SEC. 8. Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts and effects of the deceased which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

**When his pow-
ers to cease, &c.**

SEC. 9. Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease; and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

**Liability of per-
son embezzling
or alienating
goods, &c., be-
fore letters gran-
ted.**

SEC. 10. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, such person shall stand chargeable and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

**Administration
with the will an-
nexed, to be
granted on death
of sole executor.**

SEC. 11. When any sole executor or administrator shall die, without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered.

**When adminis-
trator to be re-
moved.**

SEC. 12. If an administrator shall reside out of this state, or shall neglect after due notice by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of such court, or shall abscond or become insane, or otherwise unsuitable or incapable to discharge the trust, the probate court may, by an order therefor, remove such administrator.

**Marriage of ad-
ministratrix ex-
tinguishes her
authority.**

SEC. 13. When an unmarried woman, who is administratrix, alone or jointly with another person, shall marry, her marriage shall extinguish her authority as administratrix.

**When remain-
ing administrator
to execute trust.**

SEC. 14. When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered, to some suitable person, as in case of the death of a sole administrator.

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administrator *de*
bonis non.

SEC. 15. An administrator, appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers, and shall proceed in settling the estate in the same manner, as the former executor or administrator should have had or done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

Administration
to be revoked on
proving will.

SEC. 16. If, after the granting of letters of administration by any probate court, on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration, within such time as the court shall direct.

Powers of exe-
cutor in such
case.

SEC. 17. The executor of the will shall, in such case, be entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased, remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator, before the revocation of his letters of administration.

Acts of executor,
&c., before rovo-
cation valid.

SEC. 18. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Administrators
may give joint or
separate bonds.

SEC. 19. When two or more persons shall be appointed administrators on any estate, the judge of probate may take a separate bond from each with sureties, or a joint bond, with sureties from all.

Notice of appli-
cation for ap-
pointment of ex-
ecutor, &c.

SEC. 20. When application shall be made to the judge of probate for the appointment of an administrator on an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same, and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

CHAPTER 71.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

Making and re-
turn of invento-
ry.

SECTION 1. Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights and credits of the deceased, which shall have come to his possession or knowledge; excepting only that an executor, who shall be a residuary legatee, and shall have given bond to pay all the debts and legacies, as provided by law, shall not be required to return an inventory.

Estate to be ap-
praised, &c.

SEC. 2. The estate and effects comprised in the inventory, shall be appraised by two or more disinterested persons appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects shall be in any other county, appraisers thereof may be appointed, either

him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he shall submit to the order of the court, and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

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CHAPTER 71.**

may be committed.

SEC. 10. The judge of probate, upon the complaint on oath of any executor or administrator, may cite any person, who shall have been entrusted by such executor or administrator, with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts or other papers belonging to such estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited, shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

Proceeding to compel account by persons entrusted with any part of estate.

SEC. 11. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge upon receiving a fair and just dividend of his effects.

When executor, &c., to compound with debtor.

SEC. 12. When any mortgagee of real estate, or any assignee of such mortgage, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator; and he may foreclose the same, and have any other remedy for the collection of such debt which the deceased could have had if living, or may continue any proceeding commenced by the deceased for that purpose.

Interest in mortgaged premises to be considered personal assets, &c.

SEC. 13. In case of the redemption of any such mortgage, or the sale of the mortgaged premises by virtue of a power of sale contained therein or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if, upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same, for the same persons, whether creditors, next of kin or others, who would have been entitled to the money, if the premises had been redeemed or purchased at such sale by some other person.

When executor, &c., may give release. If premises bid in, for whom executor, &c., to be seized.

SEC. 14. Any real estate so held by an executor or administrator, or which may be purchased by him as such upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court in the manner provided by law.

Real estate purchased by executor, may be sold under license.

SEC. 15. If any land so held by an executor or administrator as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same persons, and in the same proportions, as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate which the deceased held in his life time.

If such land be not sold, how assigned and distributed.

SEC. 16. When there shall be a deficiency of assets in the hands of

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CHAPTER 72.

When suit to be prosecuted to recover lands, &c., fraudulently conveyed by deceased.

an executor or administrator, and when the deceased shall, in his life time, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit, at law or in chancery, for the recovery of the same, and may recover, for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his life time, whatever may have been the manner of such fraudulent conveyance.

Executors, &c., not bound to prosecute except on application of creditors, &c.

SEC. 17. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

Disposition of estate recovered.

SEC. 18 All real estate so recovered as provided in the sixteenth section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights and credits recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

CHAPTER 72.

OF THE PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

Commissioners to examine and adjust claims, when to be appointed.

SECTION 1. When letters testamentary or of administration shall be granted by any probate court, it shall be the duty of such court to appoint two or more suitable persons to be commissioners, to receive, examine and adjust all claims and demands of all persons against the deceased, except in the following cases :

1. When it shall appear that there are no debts existing against such deceased person :

2. When the value of the whole estate, exclusive of the furniture and other personal property, allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law, in which case, such assignment shall be deemed a full and final administration, and bar to all claims against the estate.

Commissioners to appoint time and place of meeting, and give notice.

SEC. 2. When such commissioners shall be appointed, it shall be their duty to appoint convenient times and places, when and where they will meet for the purpose of examining and allowing the claims; and within sixty days after their appointment, they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in

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four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this state, or in any other manner which the court may direct.

Judge of probate to designate paper in which notice to be published, &c.

SEC. 3. The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the several townships in which it shall be required to be posted, and any other mode of notifying which he may deem necessary and proper.

When commissioner shall die, &c., court to appoint another in his place.

SEC. 4. If any commissioner, appointed by the probate court, shall at any time die, remove out of the state, refuse, or become in any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place; and no further notice of the meetings of the commissioners shall be required, in consequence of such appointment.

Time allowed for presenting claims.

SEC. 5. The probate court shall allow such time as the circumstances of the case shall require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months; and the time allowed shall be stated in the commission.

Time may be extended, not exceeding two years.

SEC. 6. The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

When commissioner may be removed, &c.

SEC. 7. On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

When court may examine and adjust claim.

SEC. 8. In the case mentioned in the preceding section, if the judge of probate shall think proper, instead of renewing the commission, he may appoint a time and place for examination and adjustment of such claim, before himself, and cause personal notice thereof to be given to the parties; and in that case, he shall proceed to examine and adjust such claim, in like manner as the same might have been done by such commissioners.

Set-offs.

SEC. 9. When a creditor against whom the deceased had claims, shall present a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate as they shall find the same to be; but no claim barred by the statute of limitations, shall be allowed by the commissioners in favor of or against the estate, as a set-off or otherwise.

Commissioners to be sworn, and may administer oaths.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

Report of commissioners.

SEC. 11. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented, or exhibited in offset, and stating how much was allowed, and how much disallowed,

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What claims
commissioners
may try and de-
cide, &c.

together with the final balance, whether in favor of the creditor or the estate; and the report shall state particularly the manner of giving notice to the claimants.

SEC. 12. The commissioners shall have power to try and decide upon all claims, which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which may be payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

Debts payable at
a future day.

SEC. 13. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day according to the terms and at the time specified in the contract.

Persons failing
to present claims
to be barred.

SEC. 14. Every person having a claim against a deceased person proper to be allowed by the commissioners, who shall not, after the publication of notice as required in the second section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever.

No suit to be
commenced
against executor
or administrator,
except eject-
ment, &c.

SEC. 15. When commissioners shall be appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions of ejectment, or other actions to recover the seizin or possession of real estate, and actions of replevin, nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

Actions pending
to be prosecuted
to judgment, and
judgment to be
certified, &c.

SEC. 16. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same, and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

Executor or ad-
ministrator not
prevented from
bringing suits.

SEC. 17. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his life time, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

Set-offs in suits
by executors, &c.

SEC. 18. In such case, the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims may be set off in such action; and if final judgment shall be rendered in favor of the defendant, the same shall be certified by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

Joint contract.

SEC. 19. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to

pay the same, if they would have been liable to do so upon payment thereof by the deceased.

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Of Appeals from the Decision of Commissioners.

SEC. 20. Any executor, administrator or creditor, may appeal from the decision and report of the commissioners, to the circuit court for the same county, if application for such appeal be made in writing, filed in the probate office within sixty days after the returning of the report of the commissioners.

Appeal, how made.

SEC. 21. In case of an appeal by a claimant against the estate, he shall, within the time aforesaid, and before such appeal shall be allowed, give a bond to the adverse party, with sufficient surety to be approved by the judge of probate and filed in his office, with a condition that he shall prosecute his appeal to effect, and pay all damages and costs which may be awarded against him on such appeal.

Bond to be given by claimant on appeal.

SEC. 22. No appeal shall be allowed from the decision and report of the commissioners, except in the following cases :

Cases in which appeal may be allowed.

1. When such commissioners shall disallow any claim in favor of any creditor or of the estate, in whole or in part, to the amount of twenty dollars :

2. When the commissioners shall allow any claim, in whole or in part, and the sum allowed, being objected to, shall amount to twenty dollars ; in either of which cases the aggrieved party may appeal.

SEC. 23. In all cases of appeal from the decision of the commissioners, the person appealing shall give notice of such appeal, and of the hearing thereof in the circuit court, in such manner as the judge of probate shall direct, at least twelve days before the next term thereof after the appeal is allowed, if there shall be so many days ; and if not, as soon as may be.

Notice of appeal and of hearing.

SEC. 24. The party appealing shall procure and file in the circuit court to which the appeal is taken, at or before the next term of such court after the appeal is allowed, a certified copy of the record of the allowance or disallowance appealed from, of the application for the appeal and the allowance of the same, together with the proper evidence that notice has been given to the adverse party according to the order of the probate court.

Party appealing to procure and file copy of record.

SEC. 25. When such certified copy shall have been filed in the circuit court, such court shall proceed to the trial and determination of the same according to the rules of law, allowing a trial by jury of all questions of fact in cases where such trial may be proper ; and such court may direct an issue to be made up between the parties in a brief form when it shall be deemed necessary ; and questions of law may be carried to the supreme court, and costs may be allowed or denied, in the discretion of the court.

Trial of appeal.

SEC. 26. The final decision and judgment in cases so appealed, shall be certified by the circuit court or supreme court, as the case may be, to the probate court ; and the same proceedings shall be had thereon, as if such decision had been reported by the commissioners.

Judgment to be certified to probate court, &c.

SEC. 27. If any claimant, appealing on account of the disallowance of his claim by the commissioners, shall fail to prosecute his appeal in the circuit court to which the appeal is taken, such claim shall be forever barred, and said court may allow costs to the appellee.

When claim barred.

SEC. 28. If the person objecting to a claim, and appealing on account of the allowance of such claim, shall neglect to prosecute his appeal, the court to which the appeal shall be taken, on motion of the

When circuit court shall affirm allowance appealed from.

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When any person interested in estate may appeal, &c.

adverse party, and on his producing an attested copy of the record of the probate court showing such appeal, shall affirm the allowance appealed from, and may allow costs against the appellant.

SEC. 29. When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate, as creditor, devisee, legatee or heir, may appeal from such decision in the same manner as the executor or administrator might have done, and the same proceedings shall be had in the name of the executor or administrator: Provided, that the person appealing in such case, shall, before the appeal shall be allowed, give a bond to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

Notice in case of appeal by executor, &c., on disallowance of his claim.

SEC. 30. When an executor or administrator shall have a claim against the estate which he represents, which shall be disallowed by the commissioners, and he shall take an appeal therefrom to the circuit court, notice of such appeal shall be given to all concerned by personal service thereof, or by publication under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before the hearing of the appeal.

Limitation of Time for Paying Debts.

Order allowing time for paying debts, &c.

SEC. 31. The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order allowing to the executor or administrator, a time for disposing of the estate and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

Court may extend time.

SEC. 32. The probate court may, on the application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies, not exceeding one year at a time, nor so that the whole time allowed to the original executor or administrator, shall exceed four years.

Application for extension and notice of hearing.

SEC. 33. When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of such application, and of the time and place of hearing, to be given to all persons interested, by publication, three weeks successively, in some newspaper to be designated by the court; and no such order extending the time, shall be granted, unless such notice shall have been previously given.

When new administrator appointed, court may extend time, &c.

SEC. 34. When an executor or administrator shall die, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator, upon due notice being given as required in the preceding section.

Of the Distribution of Assets among the Creditors, and of Insolvent Estates.

SEC. 35. If, after the report of the commissioners, and ascertain-

ing the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

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When executor, &c., to pay debts &c.

Order of payment.

SEC. 36. If the assets which the executor or administrator may have received, and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order: 1. The necessary funeral expenses: 2. The expenses of the last sickness: 3. Debts having a preference by the laws of the United States: 4. Debts due to other creditors.

SEC. 37. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

When creditors to be paid dividend.

SEC. 38. After the return of the report of the commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts, and the distribution of the assets which may have been received by the executor or administrator at the time for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this chapter.

When court to order payment of debts and distribution of assets.

SEC. 39. If an appeal shall have been taken from the decision of the commissioners as provided in this chapter, and shall remain undetermined, the probate court may suspend the decree for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims shall have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

Court may suspend decree in case of appeal undetermined.

SEC. 40. When the disputed claim shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent, and in the same proportion as the claims of the other creditors.

When disputed claim ordered to be paid.

SEC. 41. If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

Further decree for distribution.

SEC. 42. Whenever a decree shall have been made by the probate court for the distribution of the assets among the creditors, the executor or administrator, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; or he shall be liable on his bond, and the same may be put in suit, on the application of a creditor, whose debt or dividend shall not be paid, as above mentioned.

When executor, &c., personally liable to creditor.

SEC. 43. When the time for paying the debts of a deceased person shall be finally limited by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts; which notice shall be given by publishing the same at least three weeks successively, in some newspaper to be

Notice of time limited for payment of debts.

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Creditor neglect-
ing to demand
debt in two
years, may be
barred.

designated by the court, and in such other manner as the court may direct.

SEC. 44. If, after notice shall have been given as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts, or if the notice shall be given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

Contingent Claims.

Contingent
claims may be
presented.

SEC. 45. If any person shall be liable as security for the deceased, or have any other contingent claim against his estate, which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented, with the proper proof to the probate court, or to the commissioners, who shall state the same in their report, if such claim was presented to them.

When court
may order suffi-
cient estate re-
tained for pay-
ment of claims.

SEC. 46. If the court shall be satisfied from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim when the same shall become absolute, or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

Contingent claim
becoming abso-
lute, may be pre-
sented, &c.

SEC. 47. If such contingent claim shall become absolute, and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report, and the persons interested shall have the same right of appeal as in other cases.

When claimant
entitled to pay-
ment.

SEC. 48. If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditor shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but, if the claim shall not be finally established as provided in the preceding section, or if the assets retained in the hands of the executor or administrator, shall not be wholly exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same according to law.

Claim accruing
after time limited
for presenting
claims, may be
presented to pro-
bate court.

SEC. 49. If the claim of any person shall accrue or become absolute, at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court and prove the same at any time within one year after it shall accrue or become absolute, and if established in the manner provided in this chapter, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay: and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

SEC. 50. When a claim shall be presented within one year from

the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have a right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real and personal property from the estate.

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When creditor
may recover of
heirs.

SEC. 51. If an action shall be commenced against an executor or administrator on such claim, as is mentioned in the forty-ninth section, and for the payment of which sufficient assets shall not have been retained, as before provided in this chapter, the executor or administrator may give notice under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

Defence by exe-
cutor, &c., to ac-
tion.

SEC. 52. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only, as shall be equal to the amount of assets in his hands.

When defendant
discharged, &c.

SEC. 53. When the heirs, devisees or legatees, shall have received real or personal estate, and shall be liable for any debts as mentioned in this chapter, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received, but no such action shall be maintained, unless commenced within one year from the time the claim shall be allowed or established.

To what extent
heirs liable.

SEC. 54. If by the will of the deceased, any part of his estate, or any devisees or legatees shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only according to the will.

Contribution,
&c.

SEC. 55. If all the persons liable for the payment of any such debt, shall not be included in the action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred; but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

When all per-
sons liable, not
included in suit,
others may be
brought in.

SEC. 56. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the circuit court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

Proceeding in
chancery.

SEC. 57. If any of the heirs, devisees or legatees, shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

When estate of
deceased heir,
&c., liable.

SEC. 58. When any of the heirs, devisees or legatees, shall pay more

Contribution.

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than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding sixty-eighth chapter.

If appointment of commissioners omitted claimants not prevented from suing.

SEC. 59. If the appointment of commissioners to allow claims, shall in any case be omitted, no person, having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may, on obtaining judgment, have execution against such real or personal estate.

No action to be prosecuted against executors &c., except as provided in this chapter.

SEC. 60. In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payment of debts, except in the case provided for in the preceding section.

CHAPTER 73.

OF RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

What executor, &c., chargeable with.

SECTION 1. Every executor and administrator shall be chargeable in his account, with the whole of the goods, chattels, rights and credits of the deceased, which may come to his possession; also, with all the proceeds of the real estate, which may be sold for the payment of debts and legacies, and with all the interest, profit and income which shall in any way come to his hands from the estate of the deceased.

To account for personal estate at appraisal.

SEC. 2. Every executor and administrator shall account for the personal estate of the deceased, as the same shall be appraised, except as provided in the following sections.

Not to profit by increase, or loss by destruction, &c., without his fault.

SEC. 3. An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the personal estate; and he shall account for the excess, when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal, he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

When sale of personal estate may be ordered.

SEC. 4. The probate court, on the application of the executor or administrator, may, at any time, order the personal estate to be sold at private sale or at public auction, when it shall appear to be necessary for the purpose of paying debts, or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this state; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

SEC. 5. When the executor or administrator shall sell personal estate, under an order of the probate court, he shall account for the same at the price for which it shall be sold.

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SEC. 6. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

Executor, &c.,
to account for
proceeds of sale.
When not ac-
countable for
debts due de-
ceased.

SEC. 7. The executor or administrator shall also be accountable for the income of the real estate while it shall remain in his possession; and if he shall use or occupy any part of it, he shall account for it as may be agreed upon between him and the parties interested, or adjudged by the probate court with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons to be appointed by the probate court, whose award, being accepted by such court, shall be final.

To account for
income of real
estate.

SEC. 8. When an executor or administrator shall neglect or unreasonably delay to raise money, by collecting the debts or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

Executor, &c.,
accountable for
loss occasioned
by neglect.

SEC. 9. Every executor or administrator shall render his account of his administration within one year from the time of his receiving letters testamentary or of administration, unless the court shall give permission to delay, in consideration that the time for selling the estate and paying the debts shall be extended; and he shall render such further accounts of his administration from time to time, as shall be required by the court, until the estate shall be wholly settled; and he may be examined on oath upon any matter relating to his account.

Accounts, when
to be rendered.

SEC. 10. The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services, such fees as the law provides, together with all extra expenses, provided, that when the deceased shall, by his will, make some other provision for compensation to his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument filed in the probate court, renounce all claim to the compensation provided by the will.

Compensation,
&c., to executors
and administra-
tors.

SEC. 11. When no such compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts, as follows: For the first thousand dollars, at the rate of five per cent.; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent.; and for all above five thousand dollars, at the rate of one per cent.; and the same commissions shall be allowed to administrators; and in all cases, such further allowances may be made as the judge of probate shall deem just and reasonable, for any extraordinary services, not required of an executor or administrator in the common course of his duty.

1b.

SEC. 12. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, he shall be

Bond may be put
in suit, on neg-
lect to render ac-
count.

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Execution for costs, when awarded against executor, &c.

Notice of examining accounts of executors and administrators.

liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

SEC. 13. When costs, in any case, are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding, in which the cost shall be taxed, shall have been prosecuted or resisted without just cause.

SEC. 14. Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same; and such notice may be given personally, to such persons as the probate court shall judge to be interested, or by public notice, under the direction of the court.

CHAPTER 74.

OF THE PARTITION AND DISTRIBUTION OF ESTATES.

Provision for children under 7 years of age.

After payment of debts, residue to be assigned to persons entitled thereto.

Decree, what to specify.

No person entitled to share of estate until debts &c. paid, unless bond be given.

SECTION 1. Before any partition or division of any estate among the heirs, devisees or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased, under seven years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose; except where some provision shall have been made by will for their support.

SEC. 2. After the payment of the debts, funeral charges, and expenses of administration, and after the allowances made for the expense of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower and of her share in the personal estate, or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the probate court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same.

SEC. 3. In such decree, the court shall name the persons, and the proportions or parts to which each shall be entitled; and such persons shall have right to demand and recover their respective shares from the executor or administrator, or any person having the same.

SEC. 4. Such decree may be made on the application of the executor or administrator, or of any person interested in the estate, but no heir, devisee or legatee shall be entitled to a decree for his share, until payment of the debts, and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

SEC. 5. When the estate, real or personal, assigned to two or more

heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose by the probate court, who shall be duly sworn to the faithful discharge of their duties before the judge of probate or a justice of the peace, and the judge of probate shall issue a warrant to them for that purpose.

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When partition
may be made.

Sec. 6. If the real estate shall lie in different counties, the probate court may, if it shall be judged proper, appoint different commissioners for each county, and in such case, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this state.

Proceedings
when real estate
lies in different
counties.

Sec. 7. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who reside in this state, or their guardians, and to the agents, attorneys or guardians, if there be any in this state, of such as reside out of the state, either personally or by public notice, as the probate court shall direct.

Notice of appli-
cation for parti-
tion.

Sec. 8. Partition of the real estate may be made, as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Partition when
shares have
been conveyed.

Sec. 9. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished; unless any two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

Shares how set
out.

Sec. 10. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the male (*males*) to the females, and, among children, preferring the elder to the younger, provided, the party so accepting the whole, shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court and sworn for that purpose.

When estate can-
not be divided,
court may assign
the whole to one
of parties.

Sec. 11. When any tract of land, messuage or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section, provided the party so accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction,

When tract of
greater value
than either par-
ty's share, and
cannot be divi-
ded, may be set
off to one of
parties.

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CHAPTER 74.

When estate of deceased lies in common to be first severed.

Guardians for minors, &c., and agents for non residents.

Report of commissioners and proceedings thereon.

When partition may be dispensed with.

Questions relating to advancement how determined.

Appeal.

Partition when conclusive.

When executor, &c., may pay expenses of partition.

When expenses to be paid by parties interested.

SEC. 12. When partition of real estate among heirs or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made, and established by the probate court, shall be binding on all the persons interested.

SEC. 13. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the state; and notice of the appointment of such agents shall be given to the commissioners in their warrant; and notice shall be given to all the parties interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

SEC. 14. The commissioners shall make report of their proceedings to the probate court in writing; and this (*the*) court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court; and a copy thereof attested by the judge of probate under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

SEC. 15. When the probate court shall make a decree, assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them shall request that such partition be made.

SEC. 16. All questions as to advancements made or alleged to be made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the probate court, or, in case of appeal, of the circuit or supreme court, shall be binding on all persons interested in the estate.

SEC. 17. Any person aggrieved by any order, decree or denial of a probate court, in pursuance of the provisions of this chapter, may appeal therefrom as provided in other cases.

SEC. 18. The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

SEC. 19. If, at the time of the partition or distribution of any estate as provided in this chapter, the executor or administrator shall have retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it shall appear to the court just and equitable, and not inconsistent with the intention of the testator.

SEC. 20. But if there are no effects in the hands of the executor or administrator which may be lawfully applied to that purpose, the expenses and charges of the partition, being ascertained by the probate court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and

the proportions shall be settled and allowed by the probate court; and if any one shall neglect to pay the sum assessed on him by the court, an execution may be issued therefor against him by such court, in favor of the persons entitled to the same.

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SEC. 21. When the term of a widow entitled to dower or other life estate in the lands of a deceased person, shall expire, the reversion may be assigned to the persons entitled to the same, and partition thereof be made, in the manner prescribed in this chapter in relation to other estates of deceased persons.

When partition of reversion may be made.

SEC. 22. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this chapter, to any person residing out of this state, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

When court may appoint agent for non-resident.

SEC. 23. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may *examine and* allow a reasonable sum out of the profits of the estate for his services and expenses.

Agent to give bond.

CHAPTER 75.

OF PROBATE BONDS AND THE PROSECUTION OF THEM.

SECTION 1. All bonds, required by law to be taken in or by order of the probate court, shall be for such sum and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate, except where they are required by law to be taken to the adverse party.

Probate bonds, how taken.

SEC. 2. A suit may be brought on the bond of any executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

When suit may be brought by creditor on bond of executor.

SEC. 3. Such a suit may be brought by any person as next of kin to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

When suit may be brought by next kin.

SEC. 4. When it shall appear, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee or other person aggrieved by such mal-administration, to bring an action on the bond.

When court may authorize any person interested to bring suit.

SEC. 5. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having

When executor, &c., shall refuse to perform order.

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Suits on bonds to be in the name of judge of probate.

When judge may grant permission to sue bond.

Judgment in suit for benefit of particular persons.

Judgment, &c., in other cases.

Disposition of moneys collected.

When scire facias may be prosecuted.

By whom claims for damages for breach of condition may be prosecuted.

jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such judge of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

SEC. 6. In all suits upon such bonds, the writ and proceedings shall be in the name of the judge of probate, and when the action is brought for the benefit of any particular person as creditor, next of kin, or legatee, as provided in this chapter, the execution shall express that it is for the use of such creditor, next of kin, or legatee, and in such case, the person for whose use the action is brought shall be deemed the plaintiff.

SEC. 7. On the application of any person authorized by this chapter to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fees, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

SEC. 8. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with costs of suit.

SEC. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond brought by the judge of probate for any breach thereof in not performing any order or decree of the judge of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased that shall have come to the hands of such executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or mal-administration, with costs of suit.

SEC. 10. All moneys received on any execution issued on a judgment in favor of the judge of probate as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person, other than the defendant therein, as shall then be the rightful executor or administrator, and such moneys shall be assets in his hands to be administered according to law.

SEC. 11. Any person who may be injured by the breach of the conditions of such bond, may afterwards, from time to time, sue out and prosecute a scire facias in his own name, on the judgment which may have been rendered for the penalty of such bond; and, in such scire facias, shall assign and set forth the breaches on which he relies, and may therein recover such damages as he may prove, with costs.

SEC. 12. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator or guardian, in behalf of those he may represent, in the same manner as by persons living, and of full age, and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

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CHAPTER 76.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SECTION 1. When any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the probate court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

When court may decree conveyance by executor, &c.

1844, p. 113.

SEC. 2. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge of probate shall appoint a time and place for hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing, in such newspaper or newspapers in this state as he may deem necessary.

Notice of petition and hearing.

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the probate court and defend against such petition; and the court may examine on oath the petitioner, and all others who may be produced before him for that purpose.

Examination of petitioner, &c.

SEC. 4. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this chapter, he shall thereupon make a decree, authorizing and directing the executor or administrator to make and execute a conveyance thereof to such petitioner.

When decree for conveyance to be made.

SEC. 5. Any person interested may appeal from such decree to the circuit court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree, and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Appeal from decree.

SEC. 6. If, upon a hearing in the probate court as herein before provided, the judge of probate shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided.

When petition to be dismissed.

SEC. 7. Whenever any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the person entitled thereto may have a bill in the court of chancery, to enforce a specific performance of the contract by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

Bills in chancery for specific performance.

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CHAPTER 76.**

Decree in chancery.

Who to be authorized to make conveyance.

Effect of conveyance.

Certified copy of decree may be recorded, effect of record.

Decree may be enforced by process.

In case of death of person entitled, his heirs, &c., may commence or prosecute proceedings.

SEC. 8. The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein as justice and equity shall require.

SEC. 9. If it shall appear that the complainant is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this state, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or may require them, or either of them, to join in such conveyance with the executor or administrator.

SEC. 10. Every conveyance made in pursuance of a decree of the probate court or the court of chancery, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living, and then executed the conveyance.

SEC. 11. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the registry of deeds in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the register of said court and recorded as aforesaid, shall give the person entitled to such conveyance, a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 12. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree from enforcing the same by any proper process, according to the course of proceedings thereon (*therein*).

SEC. 13. If the person to whom the conveyance was to be made, shall die before the commencement of proceedings according to the provisions of this chapter, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same if already commenced; and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

TITLE XVIII.

TITLE XVIII.
CHAPTER 77.

OF TITLE TO REAL ESTATE BY SPECIAL PROVISIONS OF LAW.

Chapter 77. Of the Sale of Lands for the payment of Debts, by Executors, Administrators and Guardians.

Chapter 78. Of the sale of Lands of Minors and other Persons under Guardianship, and securing the Proceeds for their Use.

Chapter 79. Of the sale of Real Estate on Executions.

CHAPTER 77.

OF THE SALE OF LANDS FOR THE PAYMENT OF DEBTS, BY EXECUTORS, ADMINISTRATORS AND GUARDIANS.

SECTION 1. When the personal estate of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering his estate, his executor or administrator may sell his real estate, for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

When real estate may be sold for payment of debts.

1843, p. 172.

SEC. 2. In order to obtain such license, the executor or administrator shall present a petition to the probate court from which he received his appointment, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized, and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

Petition to be presented; what to set forth.

6 Mass., 149.

SEC. 3. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of probate shall thereupon make an order, directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks, and not more than ten weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

Order to show cause why license should not be granted.

SEC. 4. A copy of such order to show cause shall be personally served on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court

Copy of order to be served or published.

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shall order; provided, however, if all persons interested in the estate shall signify, in writing, their assent to such sale, the notice may be dispensed with.

Hearing.

SEC. 5. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing to such sale of all the persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

Petitioner and witnesses may be examined.

SEC. 6. The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect as in other cases.

Probate court may license sale of whole or part of real estate.

SEC. 7. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.

13 Mass., 162.
15 do 58.

Executor, &c., to give bond in certain cases before sale.

SEC. 8. When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give bond to the judge of probate with sufficient sureties to account for all the proceeds of the sale that shall remain after payment of the debts and charges, and to dispose of the same according to law; and in all cases where license is granted for the sale of real estate, the judge of probate may require a further bond from the executor or administrator, when he shall deem it necessary.

8 Pick., 526.
3 Greenl., 282.

Proceeds of sale deemed assets, and accounted for as such.

SEC. 9. The proceeds of any real estate sold for the payment of debts, and the charges of administration, as provided in this chapter, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased; and the executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

When no license to be granted on bond being given.

SEC. 10. No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate, in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts, and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the judge of probate shall direct.

For whose benefit bond may be prosecuted.

SEC. 11. The bond mentioned in the preceding section, shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator.

When court may order sale.

SEC. 12. If the judge of probate shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the



whole, or so much, and such part of the real estate described in the petition, as he shall judge necessary or beneficial.

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SEC. 13. The order shall specify the lands to be sold ; and the judge of probate may therein direct the order in which several tracts, lots or parcels, shall be sold ; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs, to be sold before that so devised ; and if it appear that any lands devised or descended, have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

Order of sale to specify lands to be sold, and the order of the sale

SEC. 14. Upon the making of such order, and the filing with the judge of probate of such bond as is required by the provisions of this chapter, a certified copy of the order of sale shall be delivered by the judge of probate to the executor or administrator, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of the order, but not after that period.

Certified copy of order to be delivered to executor, &c.

SEC. 15. License to sell real estate, as provided in this chapter, may extend to the reversion of the dower of the widow of a deceased person, and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

Sale of reversion of dower.

SEC. 16. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the township or ward in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for six weeks successively next before such sale ; in which notice the lands and tenements to be sold shall be described with common certainty.

Notice of sale.

SEC. 17. Such sale shall be in the county where the lands are situated, at public vendue, between the hours of nine o'clock in the morning, and the setting of the sun the same day.

Where, when, and how sale to be made.

SEC. 18. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold, and all sales made contrary to the provisions of this section shall be void ; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

Executor, &c., forbidden to purchase.

SEC. 19. On such sale, the executor or administrator may give such length of credit, not exceeding three years, and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of probate, and shall secure the moneys for which credit is given, by a bond of the purchaser, and by a mortgage of the premises sold.

Credit on sale.

SEC. 20. The executor or administrator making any sale shall immediately make a return of his proceedings, upon the order of sale in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor or administrator or any other person on oath, touching the same ; and if he shall be of opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and di-

Return by executor, &c., and proceedings of the court thereupon.

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If sale fair, &c.,
order of confir-
mation to be
made.

rect another to be had ; of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place.

SEC. 21. If it shall appear to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified, cannot be obtained, he shall make an order confirming such sale and directing conveyances to be executed.

Executor, &c.,
to take oath be-
fore sale.

SEC. 22. Every executor or administrator authorized to sell real estate as provided in this chapter, shall, before making such sale, take and subscribe an oath before the judge of probate or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell, he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested ; which oath shall be filed with the judge of probate before confirmation of the sale.

Affidavit of no-
tice of sale.

SEC. 23. An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this chapter, being made before the judge of probate or some other officer authorized to administer oaths, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving the notice.

Postponement of
sale.
5 Greenl., 240.

SEC. 24. If, at the time appointed at (*for*) any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice of ad-
journment of
sale.

SEC. 25. In case of such adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale ; and if the adjournment shall be for more than one day, further notice shall be given by posting, or publishing the same, or both, as the time and circumstances may admit.

Sale for payment
of legacies may
be authorized.

SEC. 26. When a testator shall have given any legacy, by a will that is effectual to pass, or charge real estate, and his goods, chattels, rights and credits, shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter, in the case of a sale for the payment of debts.

14 Mass., 421.

Interest in land
held under con-
tract may be
sold.

SEC. 27. If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold on the application of his executor or administrator, in the same cases, and in the same manner, as if he had died seized of such land ; and the same proceedings may be had for that purpose as are prescribed in this chapter, in respect to lands of which he died seized, except as hereinafter provided.

Sale to be made
subject to pay-
ments to become
due, and indem-
nity to be given.

SEC. 28. Such sale shall be made subject to all payments that may thereafter become due on such contract ; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the de-

ceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate shall approve.

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SEC. 29. Such bond shall be conditioned that such purchaser will make all payments for such land, that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

Condition of
bond of indem-
nity.

SEC. 30. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract; which assignment shall vest in the purchaser, his heirs and assigns, all the right, interest and title of the persons entitled to the interest of the deceased in the land sold, at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such land, as the deceased would have had, if he were living.

Assignment of
contract, and
rights of purcha-
ser.

SEC. 31. The proceeds of every such sale of the interest of the deceased person in lands under contract as hereinbefore mentioned, shall be disposed of in all respects in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this chapter.

Proceeds of sale,
how disposed of.

SEC. 32. All sales and conveyances of land made by executors or administrators pursuant to the provisions of this chapter, shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge of probate, until the purchaser shall execute a bond to the executor or administrator, as required in this chapter in the case of a sale of a contract for the purchase of land, on which payments are to become due.

Sales to be made
subject to incum-
brances.

SEC. 33. When an executor or administrator shall be appointed in any other state, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the foreign executor or administrator may file an authenticated copy of his appointment, in the probate court of any county in which there may be any real estate of the deceased.

Foreign execu-
tor, &c., may file
copy of his ap-
pointment.

3 Mass., 514.

SEC. 34. Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same probate court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

May be licensed
to sell lands for
payment of debts
and legacies.

SEC. 35. When it shall appear to the court granting the license, that such foreign executor or administrator is bound, with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies, and charges of administration, and a copy of such bond duly authenticated, shall be filed in such probate court, no further bond for that purpose shall be required of him by the court.

When no further
bond necessary.

SEC. 36. If an authenticated copy of such bond shall not be filed as mentioned in the preceding section, such foreign executor or admin-

When bond re-
quired, and what
to contain.

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istrator, before making such sale, shall give bond with sufficient sureties to the judge of probate, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

When licensed to sell more than is necessary to pay debts, &c., bond to be given.

SEC. 37. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies, and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond with sufficient sureties to the judge of probate, with condition to account to him for all the proceeds of the sale that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

Guardian, when may be licensed, to sell real estate of ward.

SEC. 38. When the goods, chattels, rights and credits in the hands of the guardian of any minor, or of any idiot or insane person, or any person under guardianship on account of excessive drinking, gaming, idleness or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be licensed by the probate court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner, and upon the same terms and conditions, as are prescribed in this chapter in the case of a sale by executors or administrators, excepting in the particulars in which a different provision is hereinafter made.

5 Pick., 432.

Court may license sale of whole or part of ward's estate.

SEC. 39. If it shall be represented by the guardian in his petition, and shall appear to the court, that it is necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the real estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as the court shall judge necessary, and most for the interest of all concerned.

Guardian to give bond.

SEC. 40. The guardian shall give bond to the judge of probate to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this chapter in the case of a like sale by an executor or administrator.

When license not to be granted without the approbation of superintendents of poor.

SEC. 41. No license shall be granted to any guardian, to sell real estate of his ward as provided in this chapter, in any case excepting that of minors, unless the superintendents of the poor of the county of which the ward is an inhabitant, or in which he resides, shall certify to the judge of probate, in writing, their approbation of such proposed sale, and that they deem it necessary.

Who entitled to notice of hearing.

SEC. 42. All those who are next of kin, and heirs apparant or presumptive of the ward, shall be considered as interested in the estate, and may appear as such and answer to the petition of the guardian; and when personal notice of the time and place of hearing the petition, is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators, contained in this chapter.

Foreign guardian may file copy of his appointment.

SEC. 43. When any minor, insane person or spendthrift, residing out of this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the ward.

SEC. 44. After filing an authenticated copy of his appointment,

such foreign guardian may be licensed to sell the real estate, for the payment of the debts of the ward, and the charges of managing his estate, in the same manner, and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this state, excepting in the particulars wherein a different provision is hereinafter made.

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May be licensed
to sell real estate
of ward.

SEC. 45. When it shall appear to the judge of probate, that the foreign guardian is bound, with sufficient surety or sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here; otherwise, he shall give bond, in like manner as is prescribed in this chapter in the case of sales by foreign executors or administrators.

When bond re-
quired and when
not.

SEC. 46. When such foreign guardian is authorized to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties, to the judge of probate, with condition to account before such judge, for all the proceeds of the sale that shall remain, after payment of the said debts and charges, and to dispose of the same according to law.

When licensed
to sell more than
is necessary to
pay debts, bond
to be given.

SEC. 47. In all cases of a sale by an executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any probate court, by virtue of the provisions of this chapter, whether such executor, administrator or guardian was appointed in this state or elsewhere, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the persons, and in the same proportions, as the real estate would have been by the laws of this state, if it had not been sold.

Surplus to be
considered real
estate.

3 Mass. 518.
9 Pick. 130.

SEC. 48. Every guardian, whether appointed in this state or elsewhere, when licensed to sell real estate, as provided in this chapter, shall, before making such sale, take and subscribe an oath like that required in the same case of an executor or administrator; and notice shall be given, and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator, and the evidence of giving such notice may be perpetuated in the same manner.

Guardian to take
oath before sale.

SEC. 49. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, by an executor, administrator or guardian, and if it shall appear to the court, either that the petition, or the objection thereto is unreasonable, the court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof.

When court
may award
costs.

SEC. 50. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale; and no action for any estate sold in like manner by a guardian shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

Limitations of
actions to re-
cover estate sold.

SEC. 51. The preceding section shall not apply to persons out of the state, nor to minors, or others under any legal disability to sue, at the time when the right of action shall first accrue; but all such persons

Minors and oth-
ers under dis-
ability.

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Sale not avoided on account of certain irregularities when title contested by ward.

shall (*may*) commence such action at any time within five years after the removal of the disability, or their return to this state.

Sec. 52. In case of an action relating to any estate sold by an executor, administrator or guardian, in which an heir or other person claiming under the deceased, or in which the ward, or any person claiming under him shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

1. That the executor, administrator, or guardian was licensed to make the sale by the probate court having jurisdiction:

2. That he gave a bond which was approved by the judge of probate, in case a bond was required upon granting a license:

3. That he took the oath prescribed in this chapter:

4. That he gave notice of the time and place of sale as in this chapter prescribed: and,

5. That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Damages recoverable for misconduct in relation to sale.
5 Pick., 521.

Sec. 53. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the probate bond, or otherwise, as the case may require.

Sale not avoided for certain irregularities, when title contested by adverse claimant.

Sec. 54. If the validity of a sale made by an executor, administrator or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings; provided, it shall appear that the executor, administrator or guardian, was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Liability of executor, &c., for fraud.

Sec. 55. Any executor, administrator or guardian, who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action on the case by the person having an estate of inheritance therein.

CHAPTER 78.

OF THE SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

When guardian may sell real estate of ward for support, &c.

SECTION 1. When the income of the estate of any person under guardianship, whether as a minor, insane person or spendthrift, shall not be sufficient to maintain the ward and his family, or to educate the ward when a minor, or the children of such insane person, or spendthrift, his guardian may sell his real estate for that purpose upon obtaining a license therefor, and proceeding therein as provided in this chapter.

SEC. 2. When it shall appear satisfactorily to the court upon the petition of any such guardian, that it would be for the benefit of his ward that his real estate, or any part thereof should be sold, and the proceeds thereof put out on interest, or invested in some productive stock, his guardian may sell the same for that purpose, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

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When guardian may sell and put out proceeds at interest.

SEC. 3. If the estate is sold for the purpose mentioned in the first section in (*of*) this chapter, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Application of proceeds of sale for support, &c.

SEC. 4. If the estate is sold for the purpose of putting out or investing the proceeds, as provided in the second section of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

Investment of proceeds of sale for benefit of ward.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been, if it had not been sold.

Residue on final settlement considered as real estate.

SEC. 6. In order to obtain a license for such sale, the guardian shall present to the probate court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

Petition for license.

SEC. 7. If it shall appear to the court from such petition, that it is necessary, or would be beneficial to the ward, that such real estate or some part of it should be sold, the court shall thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Order to show cause.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county, as the court shall specify in such order.

Service, &c., of order.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the superintendents of the poor of the county in which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

When certificate of superintendents of poor necessary.

SEC. 10. The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service or publication of the order, and upon filing the certificate of approbation of the superintendents of the poor, when necessary, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and all other persons interested in the estate, who shall think proper to oppose the application.

Hearing of petition.

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guardian, &c.

SEC. 11. On such hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of probate, in the same manner, and with the like effect as in other cases.

When license to
be granted.

SEC. 12. If, after a full examination, it shall appear to the court, either that it is necessary, or that it would be for the benefit of the ward, that the real estate, or any part of it should be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

Bond to be given
by guardian.

SEC. 13. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate, with sufficient surety or sureties to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale, in the manner provided by law.

Guardian to take
oath before fix-
ing time and
place of sale.

SEC. 14. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath in substance like that required in the preceding chapter, to be taken by an executor, administrator or guardian, when licensed to sell real estate pursuant to the provisions of that chapter.

Notice of sale,
&c.

SEC. 15. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian in the preceding chapter, and the evidence of the giving of such notice may be perpetuated in like manner, and with the same effect, as is provided in like cases in that chapter.

License not to be
in force more
than one year.

SEC. 16. No license granted in pursuance of this chapter, shall be in force more than one year after granting the same.

When foreign
guardian may
file copy of his
appointment.

SEC. 17. When any minor, insane person or spendthrift, residing without this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court, in any county in which there may be any real estate of the ward.

Foreign guardian
may be licensed
to sell.

SEC. 18. After filing such authenticated copy of his appointment, such foreign guardian may be licensed by the probate court of the same county, to sell the real estate of the ward in this state, in the same manner, and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this state, excepting in the particulars hereinafter mentioned.

Manner of con-
ducting sale, &c.

SEC. 19. Every foreign guardian so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this state, and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

Disposition of
residue on final
settlement by fo-
reign guardian,
&c.

SEC. 20. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been

3 Mass., 518.
9 Pick., 130.

according to the laws of this state, if it had not been sold; and such foreign guardian shall in every case, before making the sale, give bond with satisfactory surety or sureties, to the judge of probate, with condition to account for and dispose of the same accordingly.

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SEC. 21. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the court, that either the petition or the objection thereto is unreasonable, said court may, in its discretion, award costs to the party prevailing, and enforce the payment thereof.

When the court may award costs to prevailing party.

SEC. 22. No action for the recovery of any estate sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only that persons out of the state, and minors, and others under legal disability to sue, at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after the (*their*) return to the state.

Limitation of suits by ward, &c., to recover estate sold by guardian.

SEC. 23. In case of an action relating to any estate sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

Sale not avoided on account of certain irregularities.

1. That the guardian was licensed to make the sale by a probate court of competent jurisdiction:
2. That he gave a bond which was approved by the judge of probate, in case any bond was required by the court, upon granting the license:
3. That he took the oath prescribed in this chapter:
4. That he gave notice of the time and place of sale as prescribed by law: and,
5. That the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

SEC. 24. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage, in a suit on the bond of such guardian, or otherwise, as the case may require.

Liability of guardian for misconduct.

SEC. 25. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to make the sale by the proper probate court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

When sale not held void, in case of adverse claimant.

CHAPTER 79.

OF THE SALE OF REAL ESTATE ON EXECUTIONS.

SECTION 1. All the real estate of a debtor, whether in possession, What liable to sale.

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reversion or remainder, including lands fraudulently conveyed, with intent to defeat, delay or defraud his creditors, and the equities and rights of redemption hereinafter mentioned, shall be subject to the payment of his debts, and may be sold on execution as hereinafter provided.

Notice of sale. SEC. 2. Previously to the sale of any real estate taken in execution, notice of the time and place of holding such sale, shall be given as follows :

1. A written or printed notice thereof shall be fastened up in three public places in the township where such real estate shall be sold, six weeks previous to the sale, and if such sale be in a township different from that in which the premises to be sold are situated, then such notice shall also be fastened up in three public places in the township in which the premises are situated :

2. A copy of such notice shall be published once in each week, for six successive weeks, in a newspaper printed in the county in which such estate is to be sold, if there be one :

3. If there be no newspaper printed in such county, then such notice shall be published once in each week, for six successive weeks in the state paper, or in some other newspaper printed in an adjoining county.

Description.

SEC. 3. In every such notice, the real estate to be sold shall be described with common certainty, by setting forth the name or number of the township in which it is situated, and the number of the lot, or by some other appropriate description of the premises.

Sale, how, when and where made

SEC. 4. The sale of real estate by virtue of any execution, shall be at public vendue, between the hour of nine o'clock in the morning and the setting of the sun, at the court house, or place of holding the circuit court, in the county in which such estate is situated.

Officer liable in damages for selling without notice.

SEC. 5. Any officer who shall sell any real estate, without the previous notices herein directed, or otherwise than in the manner herein prescribed, shall be liable therefor to the party injured, in the sum of five hundred dollars damages, in addition to any actual damages which such party may prove on the trial of an action brought for the recovery of the same.

Damages for defacing or taking down notice.

SEC. 6. If any person shall take down or deface any notice of a sale of real estate, put up by any officer, previous to the day of sale therein specified, unless upon satisfaction of the execution by virtue of which such notice shall have been given, or upon the consent of the party suing out such execution, and of the defendant therein, such person shall be liable therefor to the party in whose favor such execution was issued, in the sum of fifty dollars damages.

Purchaser in good faith not affected.

SEC. 7. The omission of any officer to give the notice of sale required in this chapter, or the taking down or defacing any such notice when put up, shall not affect the validity of any sale made to a purchaser in good faith, without notice of such omission, taking down or defacing.

Officer not to purchase.

SEC. 8. The sheriff or other officer to whom any execution shall be directed, and the deputies of such officers, shall not, directly or indirectly, purchase or be interested in the purchase of any real estate, at any sale by virtue of such execution.

**Lots to be sold separately.
6 Wend., 522.**

SEC. 9. When any real estate offered for sale by virtue of any execution, shall consist of several known lots, tracts or parcels, such lots, tracts or parcels shall be separately exposed for sale, [and] the

defendant may direct which piece or parcel shall be first exposed for sale; and no more of such tracts or parcels shall be exposed for sale, than shall appear necessary to satisfy the execution, with the costs and expenses of such sale.

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SEC. 10. Upon the sale of any real estate by virtue of an execution, the officer making the same shall make and subscribe as many certificates as may be necessary of such sale, containing,

Certificate of sale.

1. A particular description of the premises sold :
2. The price bid for each distinct lot or parcel sold :
3. The consideration money paid for each lot or parcel : and,
4. The time when such sale shall become absolute, and the purchaser or purchasers will be entitled to a deed, as hereinafter provided.

SEC. 11. One of the said certificates shall, within ten days after such sale, be filed by the officer making the sale, in the office of the register of deeds of the county in which the sale was made, and one such certificate shall be delivered to each purchaser at said sale.

How certificate disposed of.

SEC. 12. Such original certificate, or a copy thereof duly certified by the register of deeds in whose office such original was filed, shall be received as presumptive evidence of the facts therein set forth.

Certificate evidence.

SEC. 13. Within one year from the time when such sale shall have been made, the real estate so sold, or any distinct lot, tract or portion that may have been separately sold, may be redeemed by the payment to the purchaser, his personal representatives or assigns, or to the officer who made such sale, or to the register of deeds in whose office such certificate is filed, for the use of such purchaser, of the sum of money which was bid on the sale of such lot or tract, together with the interest on that sum from the time of sale.

When and how lands may be redeemed.

SEC. 14. Such redemption may be made,

1. By the person against whom the execution was issued, and whose right and title were sold in pursuance thereof : or,

By whom redemption may be made.

2. If such person be dead, by his devisee of the premises sold, if the same shall have been devised ; and if the same shall not have been devised, by the executor or administrator, with the approbation of the judge of probate, or by the heirs of such person : or,

2 Wend., 507.

3. By any grantee of such person, who shall have acquired an absolute title by deed, sale under mortgage, or under an execution, or by any other means, to the premises sold, or to any lot, tract, parcel or portion which shall have been separately sold.

SEC. 15. Any heir or devisee of the person against whom the execution was issued, and any grantee of such person who shall have acquired an absolute title to a portion of the estate sold, or to a portion of any lot, tract or parcel that shall have been separately sold, or the executor or administrator of such person, with the approbation of the judge of probate, may redeem the lot, tract or parcel so sold, on the same terms and in the same manner as if he were grantee of the whole lot, tract or parcel, and shall have the same remedy to enforce contribution from those who shall own the residue of such lot, tract or parcel, as if the sum required to be paid by him to effect such redemption had been collected by a sale of the portion belonging to such grantee.

Heir or devisee may redeem and enforce contribution in certain cases.

SEC. 16. If there be several persons having undivided shares, as joint tenants, or tenants in common, in the premises sold, or in any particular lot or tract sold, each person having such title may redeem

Undivided shares may be redeemed.

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the share or interest belonging to him, by paying to the purchaser, or to the officer, as herein directed, a sum that will bear the same proportion to the whole purchase money bid for such premises, or for such particular lot or tract, as the share proposed to be redeemed bears to the whole number of shares of such premises, or lot or tract, together with the interest on such sum.

Sale void on redemption.

SEC. 17. Upon such payment being made by any person so entitled to redeem any real estate so sold, as provided in the preceding sections of this chapter, the sale of the premises so redeemed, and the certificate of such sale, to the extent of the premises or shares so redeemed, shall be null and void.

Time for acquiring right of purchaser.

SEC. 18. In case the persons entitled as hereinbefore provided, shall omit to redeem the premises so sold, or any part of them within the year above prescribed, then the interest vested in the purchaser by such sale may be acquired within three months after the expiration of such year, by the persons, and on the terms hereinafter prescribed.

By whom right of purchaser may be acquired.

SEC. 19. Any creditor of the person against whom such execution issued, having in his own name, or as assignee, representative, trustee or otherwise, a decree in chancery, or a judgment at law rendered at any time before the expiration of fifteen months from the time of such sale, and which shall be a lien and charge upon the premises sold, by paying the sum of money which was paid on the sale of such premises, together with the interest thereon at the rate of seven per cent. a year from the time of such sale, shall thereby acquire all the rights of the original purchaser, subject to be defeated in the manner hereinafter mentioned.

1 Wend., 42.
2 do 297.

When judgment lien on single lot.

SEC. 20. If such judgment or decree be a lien upon any lot, tract or parcel that shall have been separately sold, the creditor having the same, by paying as before provided, the sum which shall have been bid for such lot, tract or parcel, with interest as above mentioned, shall thereby acquire all the rights of the original purchaser to such lot, tract or parcel, subject to be defeated as hereinafter provided.

When on portion of lot.

SEC. 21. If such judgment or decree be a lien on a specific portion only of a lot, tract or parcel so sold, the creditor having the same may acquire the title of the purchaser to the whole of such lot, tract or parcel, in the same manner as if such lien extended to the whole.

When on undivided share.

SEC. 22. Any such creditor having such decree or judgment, which is a lien upon any undivided share or interest in any real estate sold under execution, may, within the same time, on the same terms, and in the same manner, acquire the title of the original purchaser to such share or interest, by paying such part of the whole purchase money of such real estate, as shall be in a just proportion to such share or interest.

Terms of purchase by other creditors.

SEC. 23. Whenever any such creditor shall have acquired the title of the original purchaser, pursuant to the foregoing provisions, any other creditor who might have acquired such title according to such provisions, may become a purchaser thereof from the first creditor who acquired the same, upon the following conditions:

1. By reimbursing to such first creditor, his personal representatives or assigns, the sum which may have been paid by him to acquire such title, together with interest thereon at the rate of seven per cent. a year from the time of such payment, to the time of such reimbursement :

2. If the judgment or decree by virtue of which the first creditor acquired the title of the original purchaser, be prior to the judgment or decree of such second creditor, then such second creditor shall also pay to such first creditor the amount due on his judgment or decree :

3. But if such judgment or decree of the first creditor, at the time of his acquiring the title of the original purchaser, shall have ceased to be a lien, as against such second creditor, it shall not be necessary to pay the amount thereof.

SEC. 24. In the same manner any third or other creditor, who might, according to the foregoing provisions, acquire the title of the original purchaser, may become a purchaser thereof, from the second, third, or any other creditor, who may have become such purchaser from any other creditor, upon the same terms and conditions specified in the preceding section.

Third and other creditors.

SEC. 25. If the original purchaser of any premises so sold, shall also be a creditor of the defendant against whom the execution issued, and as such might acquire the title of any purchaser, according to the preceding provisions, he may avail himself of his decree or judgment in the same manner, and on the same terms herein prescribed, to acquire the title which any creditor may have obtained.

Original purchaser being creditor.

SEC. 26. The plaintiff under whose execution any real estate shall have been sold, shall not be authorized to acquire the title of the original purchaser, or of any creditor, to the premises so sold, by virtue of the decree or judgment on which such execution issued ; but if he have any other decree or judgment, which would entitle him to acquire such title, according the preceding provisions, he may avail himself of such other decree or judgment, in the same manner, and on the same terms as any other creditor.

Plaintiff in execution, his right.

SEC. 27. The sums required to be paid by the foregoing provisions, to acquire the title of the original purchaser, or to become a purchaser from any creditor, may be paid to such purchaser or creditor, his representatives or assigns, or to the officer who made the sale, or to the register of deeds in whose office the certificate of sale is filed, for the use of the purchaser or creditor entitled to the same.

Payment of sums required.

SEC. 28. Upon such payment being made, the title of the original purchaser shall be thereby transferred to the creditor acquiring the same pursuant to the foregoing provisions, and from such creditor to any other creditor becoming a purchaser thereof as herein before provided.

Effect of payment.

SEC. 29. To entitle any creditor to acquire the title of the original purchaser, or to become a purchaser from any other creditor pursuant to the preceding provisions, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, or with said register, the following evidence of his right :

Evidence of creditors right to purchase.

1. A certified copy of the judgment or decree under which he claims the right to purchase :

2. A true copy of all the assignments of such judgment or decree, which are necessary to establish his claim, verified by his affidavit, or the affidavit of some witness thereto :

3. An affidavit by such creditor, his agent or attorney, of the true sum due on such judgment or decree, at the time of claiming such right to purchase.

6 Wend., 526.

SEC. 30. The right and title of the person against whom the execution was issued, to any real estate which shall be sold thereby, shall

When legal estate in land sold to vest.

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not be divested by such sale, until the expiration of fifteen months from the time of such sale; but if such real estate shall not be redeemed as herein provided, and a deed shall be executed in pursuance of a sale, the grantee in such deed shall be deemed vested with the legal estate from the time of the sale on such execution, for the purpose of maintaining an action for any injury to such real estate.

Suits may be brought for waste and other injuries.

SEC. 31. If at any time after a sale of real estate on execution, and before a deed shall be executed in pursuance thereof, the defendant in such execution or any other person, shall commit any waste thereon, or shall remove therefrom any buildings, fences or other fixtures belonging to the land, and which would pass to the grantee by a deed of conveyance of the same, the purchaser of such real estate, or any creditor or other person having acquired the rights of such purchaser, may have and maintain against the person doing such injury, and against any other person who shall have any such buildings, fences or fixtures in his possession after such removal, the same actions which such purchaser, creditor or other person might sustain if he were the absolute owner of the premises so sold.

For whose benefit actions may be prosecuted.

SEC. 32. After the commencement of any such action as mentioned in the preceding section, if any other creditor shall acquire the rights of the purchaser at such sale in pursuance of the provisions of this chapter, such action shall not thereby be abated or in any way affected; but the same may be prosecuted in the name of the plaintiff therein to final judgment, for the benefit of the person acquiring such rights after the commencement of the action, if he shall choose to prosecute the same, and if not, such plaintiff may continue to prosecute the same for his own benefit.

Conveyance, when and to whom to be made.

SEC. 33. After the expiration of fifteen months from the time of the sale of any real estate, if any part of the premises sold shall remain unredeemed by the person against whom the execution issued, or by any person entitled to redeem the same within one year from the time of such sale, according to the provisions of this chapter, the officer making such sale, or his successor in office, shall complete the same by executing, in due form of law, a conveyance of the premises so remaining unredeemed, either to the original purchaser, or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other creditor, as the case may be; which conveyance shall be valid and effectual to convey all the right, title and interest, which was sold on such execution.

1 Wend., 46.
2 do 507.
7 do 83.
11 do 423.

When conveyance to be made to executors, &c.

SEC. 34. In case the person who, by the provisions of the preceding sections, would be entitled to a conveyance of any real estate sold by virtue of an execution, shall die before the execution of the conveyance, the officer shall execute and deliver such conveyance to the executor or administrator of the person so deceased.

Executor, &c., to hold same in trust.

SEC. 35. The real estate so conveyed, shall be held in trust for the use of the heirs of such deceased person, subject to the dower of his widow, if there be any; but the same may be sold for the payment of debts and legacies, in the same manner as lands whereof the deceased died seized.

Surplus to be paid over by officer.

SEC. 36. If, after any sale of real estate made as herein prescribed, there shall remain in the hands of the officer any surplus money after satisfying the writ or writs of execution on which such real estate was sold, with the interest thereon, the officer shall pay over such

surplus to the judgment debtor or his legal representatives, on demand.

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SEC. 37. All rights of redeeming mortgaged real estate may be sold on execution in the manner herein prescribed for the sale of other real estate on execution, excepting in the case hereinafter specified; and such equity of redemption may be redeemed, and the rights of any purchaser may be acquired, in the same manner, and upon the same terms and conditions as other real estate sold on execution.

Equity of redemption of mortgaged premises may be sold, and redeemed.

SEC. 38. If the purchaser of any such equity of redemption, or any creditor having acquired the rights of such purchaser, shall pay the debt due on the mortgage, or any part thereof, the amount so paid on the mortgage shall be paid, with interest, to such purchaser or creditor, in redeeming the premises or purchasing the rights of such purchaser or creditor, as the case may be, according to the provisions of this chapter.

Payment on mortgage by purchaser, to be paid on redeeming, &c.

SEC. 39. The lawful fees and charges of the sale upon any execution in the manner prescribed in this chapter, shall, in all cases, be added to the amount due on the execution, and be considered as a part thereof for all the purposes mentioned in this chapter.

Fees and charges to be added to amount due on execution.

SEC. 40. When a judgment shall be recovered for a debt secured by mortgage of real estate, or for any part of such debt, it shall not be lawful for the sheriff or other officer to sell the equity of redemption of the mortgagor, his heirs or assigns in such estate, by virtue of any execution upon such judgment.

When right of redemption not to be sold.

SEC. 41. Whenever any execution against the property of the defendant shall be issued upon such judgment as is mentioned in the preceding section, the plaintiff or his attorney shall indorse on such execution, a brief description of the premises mortgaged, with a direction to the officer not to levy such execution upon the said premises or any part thereof.

Description of mortgaged premises to be endorsed on execution with direction.

SEC. 42. If such execution shall not be collected of the other property of the defendant, the officer shall return the same unsatisfied, in whole or in part, as the case may require.

When execution to be returned unsatisfied.

SEC. 43. Before any assignee, or his personal representative, shall be entitled to a deed under the provisions of this chapter, every assignment under which he claims title, shall be executed and acknowledged or proved, in the same manner that deeds are required to be executed and acknowledged or proved, to entitle the same to be recorded, and such assignee shall cause the same to be recorded in the office of the register of deeds, in the county where the real estate so sold is situated.

Assignments to be recorded.

1841, p. 134, § 3.

SEC. 44. If the purchaser of any real estate, sold by virtue of an execution, his heirs and (*or*) assigns, shall be evicted from the possession of such real estate, or if in [an] action for the recovery thereof, judgment shall be rendered against him or them, in consequence,

When purchaser may recover.

1. Of any irregularity in the proceedings concerning such sale: or,
2. Of the judgment upon which such execution issued being vacated or reversed; such purchaser, his heirs or assigns, may recover of the party for whose benefit such real estate was sold, the amount paid on the purchase thereof, with interest.

5 Cowen, 38.

SEC. 45. The party for whose benefit such real estate was sold, and his personal representatives, upon such recovery being had against him in consequence of any irregularity in the proceedings concerning the sale, may have further execution upon the judgment, by virtue of

Remedy of plaintiff.

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**Judgment, how far
effectual for pur-
pose of remedy.**

which such sale was made, to levy the amount paid on such sale, with interest.

SEC. 46. Such judgment shall be deemed valid and effectual for the purpose specified in the preceding section, against the defendant therein, his personal representatives, heirs and devisees, but not against any purchaser in good faith, or any incumbrancer by mortgage, judgment or otherwise, whose title or incumbrance shall have accrued before the levy of such further execution.

**Cases of contri-
bution.**

SEC. 47. When lands and tenements, in the hands of several persons, shall be liable to satisfy any judgment, and the whole of such judgment, or more than a due proportion thereof, shall be levied upon the lands of one or more of such persons, the persons so aggrieved, or their personal representatives, may compel a just and equal contribution by all the persons whose lands and tenements ought to contribute to the satisfaction of such judgment.

**5 John., Ch. Rep.
235, 1 page. 226.**

**Order of contri-
bution.**

SEC. 48. Such lands and tenements shall be liable to contribution in the following order :

1. If they were conveyed by the defendant in the execution, they shall be liable in succession, commencing with the lands last conveyed :

2. If they were sold under execution against the defendant, they shall also be liable in succession, commencing with the lands sold under the last and youngest judgment :

3. If there be lands so liable, which were conveyed by the defendant in the execution, and also lands which have been sold under execution against such defendant, they shall respectively be liable in succession, according to the order hereinbefore prescribed.

**How contribu-
tion enforced in
chancery.**

SEC. 49. If a bill be filed in chancery to enforce such contribution, the person aggrieved shall be entitled to use the original judgment, and by virtue thereof, to pay the amount which ought to be contributed by the lands and tenements subject to such judgment ; and for that purpose, such judgment shall remain a lien and charge upon such lands and tenements, for the term of five years after a certified copy thereof shall have been filed and entered in the office of the register of deeds in the county where the lands are situated, to the extent of the sum which ought to be so contributed, notwithstanding such sum or any part thereof, may have been paid by the party seeking such contribution.

**Lien of original
judgment.**

SEC. 50. But such original judgment shall not remain a lien upon any lands, nor shall they be subject to an execution as herein provided, unless the person aggrieved, shall file an affidavit with the register of deeds in whose office a certified copy of such judgment shall have been filed and entered, stating the sum paid, and his claim to use such judgment for the reimbursement thereof, or of some portion of the same.

**Entry to be made
in margin of
copy.**

SEC. 51. On the filing of such affidavit, the register of deeds shall make an entry in the margin of the entry of the certified copy of such judgment, stating the sum so paid, and that such judgment is claimed to be a lien to that amount.

**Action of as-
sumpsit to reco-
ver contribution.**

SEC. 52. Any person upon whose lands and tenements, more than a due proportion of any judgment may have been levied, may in his election, have an action of assumpsit against any person whose lands ought to contribute as hereinbefore provided, to recover the amount which such person ought to contribute on account of such lands.

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CHAPTER 80.OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO REAL
AND PERSONAL PROPERTY.Chapter 80. Of Fraudulent Conveyances and Contracts relative to
Lands.Chapter 81. Of Fraudulent Conveyances and Contracts relative to
Goods, Chattels and Things in Action.Chapter 82. General Provisions relating to Fraudulent Conveyances
and Contracts.

CHAPTER 80.

OF FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO LANDS.

SECTION 1. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands or upon the rents and profits thereof, made or created with intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents or profits, as against such purchasers, shall be void.

Conveyance with
intent to defraud.

SEC. 2. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice of the prior conveyance or charge, at the time of his purchase, unless it shall appear that the grantee in such prior conveyance, or person to be benefitted by such charge, was privy to the fraud intended.

Qualification of
last section.

SEC. 3. Every conveyance or charge of, or upon, any estate or interest in lands, containing any provision for revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyance with
power of revoca-
tion at will of
grantor, void.

SEC. 4. When a power to revoke a conveyance of any lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person, other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Conveyance by
one authorized
to revoke former
grants.

SEC. 5. If a conveyance to a purchaser, under either of the two last preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall neverthe-

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less be valid, from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent, as if then made.

Requisites to convey certain interests in lands.

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

6 Wend., 461.
10 do. 436.

Qualification of last section.

SEC. 7. The preceding section shall not be construed to affect in any manner, the power of a testator in the disposition of his real estate, by a last will and testament; nor to prevent any trust from arising, or being extinguished, by implication or operation of law.

Contracts to lease or sell lands, when void

SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing.

Consideration need not be set forth.

SEC. 9. The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

Powers of court of chancery not abridged.

SEC. 10. Nothing in this chapter contained, shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements, in cases of part performance of such agreements.

CHAPTER 81.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO GOODS CHATTELS, AND THINGS IN ACTION.

Certain transfers of personal property void.

SECTION 1. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors, existing or subsequent, of such person.

Certain contracts to be void, unless in writing.

SEC. 2. In the following cases specified in this section, every agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof be in writing, and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized, that is to say :

10 Wend., 426.
4 do., 657.
9 do. 263.
10 do. 461.

1. Every agreement that, by its terms, is not to be performed in one year from the making thereof :

2. Every special promise to answer for the debt, default, or misdoings of another person :

3. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry :

4. Every special promise made by an executor or administrator, to answer damages out of his own estate.

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SEC. 3. No contract for the sale of any goods, wares or merchandise, for the price of fifty dollars or more, shall be valid, unless the purchaser shall accept and receive part of the goods sold, or shall give something in earnest, to bind the bargain or in part payment, or unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

Contract for sale of goods exceeding fifty dollars.

3 Wend.. 112.

SEC. 4. Whenever any goods shall be sold at auction, and the auctioneer shall, at the time of sale, enter in a sale-book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a memorandum of the contract of sale, within the meaning of the last section.

Sales at auction.

SEC. 5. No action shall be brought to charge any person, upon or by reason of any favorable representation or assurance, made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance be made in writing, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

Representations in regard to the ability, &c., of another.

SEC. 6. The consideration of any contract, agreement or promise required by this chapter to be in writing, need not be expressed in the written contract, agreement or promise, or in any note or memorandum thereof, but may be proved by any other legal evidence.

Consideration need not be set forth,
17 Mass., 122.
5 Cranch, 142.
4 B. & A., 585.

SEC. 7. Every sale made by a vendor, of goods and chattels in his possession, or under his control, and every assignment of goods and chattels by way of mortgage or security, or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold, mortgaged or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

When sale, &c., to be presumed fraudulent, unless followed by change of possession.

12 Wend., 297.

SEC. 8. The term "creditors," as used in the preceding section, shall be construed to include all persons, who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession, or under his control.

Who deemed creditors.

SEC. 9. Nothing contained in the two last sections, shall avoid or defeat any contract of bottomry or respondentia, nor any transfer, assignment, or hypothecation of any vessels or goods at sea or abroad, if the assignee or mortgagee shall take possession of such vessels or goods, as soon as may be after the arrival thereof.

Two last sections qualified.

SEC. 10. Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, which shall hereafter be made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof shall be filed in the office of the township clerk of the township where the mortgagor resides.

Mortgage of goods, &c., void unless filed.

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Township clerk
to file mortgages.

Names of parties
to be entered.

Void unless re-
newed in one
year.

Subsequent re-
newals.

Certified copy of,
evidence of
what facts.

Fees of township
clerk.

SEC. 11. It shall be the duty of the township clerk, upon the presentation of any such instrument or copy for that purpose, and the payment of his fees, to endorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

SEC. 12. Such township clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy.

SEC. 13. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file as aforesaid, an affidavit, setting forth the interest which the mortgagee has by virtue of such mortgage, in the property therein mentioned, upon which affidavit the township clerk shall endorse the time when the same was filed.

SEC. 14. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with the like effect.

SEC. 15. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the township clerk, in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy or affidavit was received and filed, according to the endorsement of the township clerk thereon, and of no other fact.

SEC. 16. The township clerks shall be entitled to receive the following fees for services under the provisions of this chapter: For filing each instrument, copy or affidavit, six cents; for entering the same in a book, six cents for each party to such instrument; for searching for each paper, six cents, and the like fees for certified copies of such instruments, copies or affidavits, as are allowed by law for copies of records kept by registers of deeds.

CHAPTER 82.

GENERAL PROVISIONS RELATING TO FRAUDULENT CONVEYANCES AND CONTRACTS.

Conveyances to
hinder or defraud
creditors,
void.

SECTION 1. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and any charge upon lands, goods or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other

persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

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SEC. 2. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing and signed by the party making the same, or by his agent lawfully authorized, shall be void.

Grants of trusts
to be in writing.

SEC. 3. Every conveyance, charge, instrument or proceeding, declared by law to be void as against creditors or purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors or purchasers.

Certain convey-
ances, &c., void,
as against heirs,
&c.

SEC. 4. The question of fraudulent intent, in all cases arising under this, or either of the last two preceding chapters, shall be deemed a question of fact, and not of law.

Fraudulent in-
tent a question
of fact.
8 Cowen, 406.
3 Paige, 557.

SEC. 5. None of the provisions of this, or the last two preceding chapters, shall be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Purchaser with-
out notice pro-
tected.

SEC. 6. The term "conveyance," as used in this and the preceding eightieth chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be the form of such instrument, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

Term "convey-
ance," how con-
strued.

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TITLE XX.

OF THE DOMESTIC RELATIONS.

- Chapter 83. Of Marriage and the Solemnization thereof.
Chapter 84. Of Divorce.
Chapter 85. General Provisions concerning Husband and Wife.
Chapter 86. Of Guardians and Wards.
Chapter 87. Of Masters, Apprentices and Servants.

CHAPTER 83.

OF MARRIAGE AND THE SOLEMNIZATION THEREOF.

Who shall be
capable of con-
tracting marri-
age.

SECTION 1. Every male who shall have attained the full age of eighteen years, and every female who shall have attained the full age of sixteen years, shall be capable in law of contracting marriage, if otherwise competent.

Marriage is a ci-
vil contract.

SEC. 2. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of parties capable in law of contracting, is essential.

Who shall not
intermarry.

SEC. 3. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, nor his sister, brother's daughter, sister's daughter, father's sister, or mother's sister.

Ib.

SEC. 4. No woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, nor her brother, brother's son, sister's son, father's brother, or mother's brother.

Who not to mar-
ry.
1 Pick., 136.
8 do 433.

SEC. 5. No marriage shall be contracted whilst either of the parties has a former wife or husband living, unless the marriage with such former wife or husband, shall have been dissolved.

Ib.
12 Mass., 363.

SEC. 6. No white person shall intermarry with a negro, and no insane person or idiot shall be capable of contracting marriage.

Marriage, by
whom solemn-
ized.

SEC. 7. Marriages may be solemnized by any justice of the peace, in the county in which he is chosen; and they may be solemnized throughout the state by any minister of the gospel, who has been ordained according to the usages of his denomination, and who resides in this state, and continues to be a preacher of the gospel.

One of parties to
be examined on
oath.

SEC. 8. All justices of the peace and ministers of the gospel are hereby authorized and required, before solemnizing any marriage, to examine at least one of the parties on oath, which oath they are hereby authorized to administer, as to the legality of such intended marriage.

SEC. 9. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony.

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No particular
form required.

SEC. 10. Whenever a marriage shall have been solemnized pursuant to the provisions of this chapter, the minister or magistrate who solemnized the same, shall give to each of the parties, on request, a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place of such marriage.

Certificate of
marriage.

SEC. 11. Every justice and minister shall keep a record of the marriages solemnized before him, and within three months after the solemnization of any marriage, shall make and deliver to the clerk of the county in which the marriage took place, a certificate under his hand, containing the particulars mentioned in the preceding section.

Record to be
kept and certifi-
cate delivered to
county clerk.

SEC. 12. All such certificates shall be recorded by the county clerk in a book to be kept by him for that purpose; and for recording the same, the clerk shall receive a fee of twenty-five cents from such minister or justice, who shall also be entitled to receive the same from the parties, before the marriage.

Clerk to record
certificate, his
fee.

SEC. 13. Every justice and minister who shall neglect to make and deliver to the clerk such certificate of marriage, shall forfeit for each neglect, a sum not less than twenty nor more than one hundred dollars; and every clerk who shall neglect to record such certificate, shall forfeit the like penalty.

Forfeiture for ne-
glect.

SEC. 14. If any justice of the peace or minister of the gospel, shall join any persons in marriage contrary to the provisions of this chapter, he shall forfeit for every such offence, a sum not exceeding five hundred dollars.

Forfeiture for
joining persons
in marriage con-
trary to law.

SEC. 15. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by a fine not less than fifty nor more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

Punishment of
persons unautho-
rized, &c.

13 Pick., 111.

SEC. 16. No marriage, solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed justice or minister, provided the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Marriage not
void in certain
cases.
7 Mass., 48.
1 Pick., 235.
6 Greenl., 148.

SEC. 17. The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among people of any other particular denomination, having, as such, any peculiar mode of solemnizing marriages; but such marriages may be solemnized in the manner heretofore used and practiced in their respective societies or denominations.

Marriages among
quakers, &c.

SEC. 18. The original certificates and records of marriage made

Evidence.



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CHAPTER 84.**

by the minister or justice as prescribed in this chapter, and the record thereof made by the county clerk, or a copy of such record duly certified by such clerk, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

CHAPTER 84.

OF DIVORCE.

What marriages
void, without de-
cree of divorce.

SECTION 1. All marriages which are prohibited by law, on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living; all marriages solemnized when either of the parties was insane or an idiot, and all marriages between a white person and a negro, shall, if solemnized within this state, be absolutely void, without any decree of divorce, or other legal process.

12 Mass. 363.

Ib.

SEC. 2. In case of a marriage solemnized when either of the parties was under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void, without any decree of divorce or other legal process.

Suit may be
brought to annul
marriage.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned in the two preceding sections; either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition or bill in the circuit court of the county where the parties, or one of them reside, or in the court of chancery, for annulling the same, and such petition or bill shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void by a decree or sentence of nullity.

Suit to affirm
marriage.

SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage; and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court; and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

Sentence to im-
prisonment for
life dissolves
marriage.

SEC. 5. When either party shall be sentenced to imprisonment for life in any prison, jail or house of correction, the marriage shall be thereby absolutely dissolved, without any decree of divorce or other legal process, and no pardon granted to the party so sentenced, shall restore such party to his or her conjugal rights.

Divorce from
bond of matri-
mony, for what
causes may be
decreed.

SEC. 6. A divorce from the bond of matrimony may be decreed by the circuit court of the county where the parties, or one them, reside, or by the court of chancery, on the application by petition or bill of the aggrieved party, in either of the following cases:

1. Whenever adultery has been committed by any husband or wife;
2. When one of the parties was physically incompetent at the time of the marriage;

3. When one of the parties has been sentenced to imprisonment

in any prison, jail or house of correction for three years or more ; and no pardon granted to the party so sentenced, after a divorce for that cause shall restore such party to his or her conjugal rights:

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4. When either party shall desert the other, for the term of two years :

5. When the husband or wife shall have become an habitual drunkard.

SEC. 7. A divorce from bed and board forever, or for a limited time, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by any other means ; or for utter desertion by either of the parties for the term of two years ; and a like divorce may be decreed on the complaint of the wife, when the husband, being of sufficient ability to provide a suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

Divorce from bed and board, when may be decreed.

1844, p. 74 § 2.

SEC. 8. A divorce from the bond of matrimony may be decreed for either of the causes mentioned in the preceding section, whenever, in the opinion of the court, the circumstances of the case shall be such that it will be discreet and proper so to do.

Divorce from bond of matrimony, for same causes.

SEC. 9. No divorce shall be granted, unless the party exhibiting the petition or bill of complaint therefor, shall have resided in this state one year immediately preceding the time of exhibiting such petition or bill ; or unless the marriage was solemnized in this state, and the complainant shall have resided in this state from the time of such marriage to the time of exhibiting the petition or bill.

In what cases divorce not to be granted.
1844, p. 74, § 1,
1842, p. 116-117.

SEC. 10. No divorce shall be decreed in any case, when it shall appear that the petition or bill therefor was founded in or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

No divorce when complainant guilty.

SEC. 11. A petition or bill for a divorce may be exhibited by a wife in her own name, as well as a husband ; and in all cases the respondent may answer such bill without oath or affirmation.

Bill or petition by wife in her own name—answer without oath.

SEC. 12. Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity ; and the court shall have the power to award issues, to decree costs, and to enforce its decrees, as in other cases.

Suits, how conducted.

SEC. 13. In every suit brought, either for a divorce, or for a separation, the court may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit, during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Court may require husband to pay expenses.

SEC. 14. After the exhibiting of a petition or bill in a suit to annul a marriage, or for a divorce, whether from the bond of matrimony, or from bed and board, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

Court may prohibit restraint of liberty of wife.

SEC. 15. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

Court may make order concerning care and maintenance of children during pendency of suit.

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Order in relation to care, &c., of children on final decree.

Decree may be revised, and new decree made.

When wife entitled to her real estate.

Restoration of personal estate to wife, &c.

Trustees, when may be appointed.

Duties of trustees, their bond.

Husband may be required to disclose on oath.

Court may further decree alimony, &c.

SEC. 16. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony, or from bed and board, the court may make such further decree as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain.

SEC. 17. The court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents, and the benefit of the children shall require.

SEC. 18. Whenever the nullity of a marriage, or a divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

SEC. 19. Upon every such dissolution of a marriage as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

SEC. 20. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

SEC. 21. Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions, and at such times as the court shall direct, regard being had, in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require, for the faithful performance of their trust.

SEC. 22. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose on oath, what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

SEC. 23. Upon every divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board for any cause, if the estate and effects restored or awarded to the wife, shall be insufficient for the suitable support and maintenance of herself and such children of the

marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband, and such alimony out of his estate, as it shall deem just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all the other circumstances of the case.

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SEC. 24. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery committed by the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands, in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

When wife entitled to dower.

13 Mass., 231.

SEC. 25. When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and he shall also hold her real estate so long as they shall both live; and if he shall survive her, and there shall have been issue of the marriage born alive, he shall hold her real estate for his own life, as tenant by the curtesy.

Husband entitled to estate of wife, in case of divorce for adultery by wife.

SEC. 26. In the case last mentioned, the court may, by the decree, allow the wife for her subsistence, as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

Court may allow wife part of her estate, in the last mentioned case.

SEC. 27. In all cases, when alimony or other allowance shall be decreed for the wife or children, the court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

Court may require security for payment of alimony, &c.

SEC. 28. After a decree for alimony or other allowance, for the wife and children, or either of them, and also after a decree for the appointment of trustees, to receive and hold any property for the use of the wife or children as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree, respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

Court may alter decree for alimony, &c., on petition.

SEC. 29. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the cause; and in every case, the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

Legitimacy of children in case of adultery.

SEC. 30. Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

Legitimacy in case of non age, &c.

SEC. 31. When a marriage is dissolved on account of a prior marriage of either party, and it shall appear that the second marriage

Legitimacy in case of former husband or wife living.

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Illegitimate in certain cases.

Cohabitation after divorce, how punished.

Who may exhibit bill to annul marriage in case of non-age.

In case of idiot or lunatic, who may exhibit bill.

When lunatic may exhibit bill, and when nullity not to be decreed.

When nullity not to be decreed in case of force or fraud.

Issue of marriage annulled on account of force or fraud.

In case of physical incapacity, suit to be brought within two years.

Decree not to be made solely on confession, &c.

In case of adultery, court may deny divorce in certain cases.

was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the decree of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

SEC. 32. Upon the dissolution, by decree or sentence of nullity, of any marriage that is prohibited on account of consanguinity or affinity between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

SEC. 33. If any persons, after being divorced from the bond of matrimony for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

SEC. 34. A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, or by the next friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

SEC. 35. A bill to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic.

SEC. 36. The marriage of a lunatic may also be declared void, upon the application of the lunatic, after the restoration of reason; but in such case, no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

SEC. 37. No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.

SEC. 38. If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the innocent parent, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

SEC. 39. A suit to annul a marriage, on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall, in all cases be brought within two years from the solemnization of the marriage.

SEC. 40. No decree of divorce, or of the nullity of a marriage, shall be made solely on the declarations, confessions, or admissions of the parties; but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the bill for that purpose.

SEC. 41. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement, or with the connivance, of the complainant:
2. When the offence charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by

the voluntary cohabitation of the parties, with the knowledge of the offence:

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3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offence charged.

SEC. 42. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

Court may decree support, though divorce from bed and board be not decreed.

SEC. 43. When a decree of divorce from bed and board, forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

Decrees for divorce from bed and board may be revoked.

CHAPTER 85.

GENERAL PROVISIONS CONCERNING HUSBAND AND WIFE.

SECTION 1. When any married man shall absent himself from the state, abandoning his wife, and not making sufficient provision for her maintenance, if the wife is of the age of twenty-one years, the probate court of the county in which she resides may, on her petition, authorize her to sell and convey or lease her real estate, or any part thereof, and also to sell and dispose of any personal estate which shall, at any time have come to the husband, or to which he may be entitled, by reason of the marriage, and which may remain in this state undisposed of.

When husband abandons wife, certain powers may be granted to her.

SEC. 2. The probate court may also, upon the petition of the wife, authorize any person owning (*owing*) or holding any money or other personal estate, to which the husband is entitled in her right, to pay and deliver the same to the wife, and may authorize her to give a discharge for the same, which discharge shall be as valid as if made by the husband.

Authority may be given to deliver property to wife, &c.

SEC. 3. All the proceeds of such sales, and all other money and personal estate, which shall come to the hands of the wife by force of this chapter, may be used and disposed of by her, during the absence of her husband, as her own property, in the same manner as if she were unmarried.

Proceeds of sales &c., may be disposed of by wife.

SEC. 4. The said court may further authorize such married woman to make any contract, under seal or otherwise, in her own name, and also to commence, prosecute and defend any suit or suits in law or equity, to final judgment and execution, in like manner as if she were unmarried.

Court may authorize contracts by married woman, &c.

SEC. 5. Every woman so authorized, may make and execute any deeds and other instruments, in her own name, and do all other lawful acts, that may be necessary or proper to carry into effect the powers so granted to her.

Deeds, &c., may be executed by her.

SEC. 6. The power so granted to a married woman, shall continue,

How long powers to continue.

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Effect of con-
tracts.

and may be exercised, until her husband shall return into this state and claim his marital rights.

SEC. 7. All contracts lawfully made by any married woman, by virtue of such power, shall be binding on her and her husband, in like manner as if their marriage had taken place after the making of such contracts; and she shall, during the absence of her husband from the state, be liable to be sued thereon as if she were unmarried.

Liability of mar-
ried women.

SEC. 8. She shall also be liable to be sued, in like manner, for all other acts done, or liabilities incurred by her during the continuance of the power so granted to her.

Husband may
become party to
suits.

SEC. 9. No suit wherein such woman shall be a party, under the provisions of this chapter, shall be abated by the return of her husband into the state, but he may, on his application, be admitted to prosecute or defend the suit, jointly with her, in like manner as if they had intermarried after the commencement of the suit.

Suit to proceed
if husband does
not become a
party.

SEC. 10. If the husband shall not be admitted as a party to the suit, it shall proceed to judgment and execution as if he had not returned to the state; and any judgment recorded (*recovered*) against the wife, may be enforced against him, in like manner as if it had been rendered against her before their intermarriage.

Petition to pro-
bate court, notice
and hearing.

SEC. 11. Every petition of a married woman for the purposes mentioned in the preceding sections of this chapter, shall be verified by the oath of the petitioner, and upon the presentation thereof, the probate court shall appoint a time and place of hearing, and shall cause a notice of hearing to be given, either by publishing the same in a newspaper for three successive weeks, or by posting up copies thereof at least three weeks before such hearing, in such places as the court may direct.

When husband
sentenced to im-
prisonment, wife
may have cer-
tain powers.

SEC. 12. When any married man shall be sentenced to confinement in the state prison, his wife may, on her petition to the probate court of the county in which she resides, be authorized to sell and convey her estate, and do any or all other acts which may, according to the provisions of this chapter, be done by a married woman, when authorized as before provided, in the absence of her husband, and with the like effect in all respects; and the authority so granted to the wife of a convict, may continue and be exercised until the discharge of her husband from prison.

Petition by wife
of convict.

SEC. 13. The petition of the wife of such convict shall be presented, and the proceedings thereon conducted in the same manner as in the case of the petition of a married woman whose husband has absented himself from the state, except that where evidence of the sentence of the husband shall be furnished at the time of presenting the petition, it shall not be necessary to defer the hearing, or give notice thereof.

Wife may join
guardian in con-
veyance, &c.

SEC. 14. When the guardian of any married man shall be duly licensed to sell the real estate of his ward, the wife of the ward may, if she thinks proper, join with the guardian in the conveyance, and thereby release her right of dower in the granted premises, in like manner as she might have done, by joining in a conveyance thereof made by her husband, if he had been under no legal disability.

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SEC. 15. When such guardian shall be licensed to sell the interest of the ward in any real estate of his wife, the wife may, if she thinks fit, join with the guardian in the conveyance, and thereby sell and convey all her estate and interest in the granted premises, in like manner as she might have done by joining in a conveyance thereof made by her husband, if he had been under no legal disability.

SEC. 16. In case of any such release by the wife, of her right of dower, or of any such conveyance of her own estate, the proceeds of the sale may be so invested and disposed of, as to secure to her the same right, use and benefit of the principal sum and the income thereof, that she would have had in such real estate and the income thereof, if it had not been sold.

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Release of dower, &c.

SEC. 17. Any agreement made between the wife and the guardian of her husband, for securing and disposing of the proceeds of any such sale, or any part of such proceeds, for the purpose mentioned in the preceding section, being approved and confirmed by the judge of probate who granted the license to sell, or by the circuit court on an appeal from the decision of the judge of probate, shall be valid and binding upon all persons interested in the estate, and may be enforced by an action at law, or a suit in chancery.

Agreement between wife and guardian.

SEC. 18. When the real estate of any married woman shall be taken for any public use, or shall be damaged by the laying out and establishing of a highway, railroad, turnpike, or other public work, the damages or compensation awarded therefor may be so invested and disposed of, as to secure to her the same right, use and benefit, of and in the sum so awarded, and the income thereof, as she would have had of and in the real estate and the income thereof, if it had not been so taken or damaged.

When real estate of married women taken for public use.

SEC. 19. On application of any such woman to the probate court of the county in which such real estate is situated, or of the county in which she resides, such court may hear and determine the case, and may make all such orders and decrees as shall be necessary and proper to enforce and secure her said rights and interests.

Probate court may make decrees for securing rights of wife.

SEC. 20. When any married woman shall come from any other state or country into this state, without her husband, he having never lived with her in this state, she may transact business, make contracts, and commence, prosecute, and defend suits in her own name, and dispose of her property which may be found in this state, or which she may acquire, in like manner, in all respects, as if she were unmarried.

Married woman coming from another state or country, without her husband.

SEC. 21. Such married woman shall be liable to be sued as if she were unmarried, upon all contracts, and for all other acts, made or done by her after her arrival in this state; and she may make and execute any deeds and other instruments, in her own name, and do all other lawful acts, that may be necessary and proper to carry into effect the powers herein granted to her.

Powers and liabilities of such married woman.

SEC. 22. If the husband of any such woman shall afterwards come into this state, and claim his marital rights, his arrival here shall have the same effect, with regard to any suit then pending, in which she is a party, and to any contract made, or business transacted by her under the power granted to her by the provisions of this chapter, as if they had been just married at the time of his arrival here, and shall have no other effect.

Husbands coming into this state and claiming marital rights—effect of.

SEC. 23. The wife of any man who is under guardianship, may join with the guardian in making partition of her own real estate, held in joint tenancy or in common, and may, jointly with such guardian, make any release or other conveyance necessary or proper for that purpose, in like manner as she might have done with her husband, if he had been under no legal disability.

Wife of ward may join in partition of her real estate.

1829, p. 220, § 16.

SEC. 24. Upon a divorce from bed and board, the wife shall have

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Powers of wife
on divorce from
bed and board.

Rights of married woman
in relation
to property owned by her.
1844, p. 77.

the same powers and rights in respect to her real and personal estate, and to such as she may afterwards acquire, and shall be subject to the same liabilities in all respects, as an unmarried woman, and may sue and be sued in her own name in like manner.

SEC. 25. Any real or personal estate which may have been acquired by any female before her marriage, either by her own personal industry, or by inheritance, gift, grant or devise, or to which she may at any time after her marriage be entitled by inheritance, gift, grant or devise, and the rents, profits and income of any such real estate, shall be and continue the real and personal estate of such female after marriage, to the same extent as before marriage; and none of said property shall be liable for her husbands's debts, engagements or liabilities; but such property shall be liable for all debts of the wife contracted prior to her said marriage; provided, that nothing in this section contained shall be construed to authorize any married woman to give, grant or sell any such real or personal property during coverture, without the consent of her husband, except by order of the judge of probate, or the proper court of the county; and provided further, that upon a separation between such husband and wife, saving by an adjudication of court, such married woman shall in no case be authorized to remove any such property from the premises of her husband without his consent.

Concurrent jurisdiction in cases arising under last section.

SEC. 26. The circuit court for the county where the parties or either of them reside, shall have concurrent jurisdiction with the court of chancery in all cases arising under the provisions of the preceding section, and the wife may institute proceedings to enforce the said provisions, in her own name or otherwise.

Estate of husband by curtesy.

SEC. 27. If any married woman shall die without disposing of any such real estate, the husband surviving her shall have a life estate therein by the curtesy.

CHAPTER 86.

OF GUARDIANS AND WARDS.

Judge of probate may appoint guardians.

SECTION 1. The judge of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as shall reside without the state, and have any estate within the same.

Who to nominate guardians.

SEC. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly.

In what case judge to nominate.

SEC. 3. If the guardian nominated by such minor, shall not be approved by the judge, or if the minor shall reside out of this state, or if, after being cited by the judge, he shall neglect for ten days to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

SEC. 4. When such minor, being above the age of fourteen years,

shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, or by the township clerk, which shall have the same effect as if made in the presence of the judge.

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When nomination may be certified by justice of the peace, &c.

SEC. 5. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and to the care of his education.

Parent, when entitled to custody of minor child. 1840, p. 139, § 2.

SEC. 6. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

When guardian to have custody of ward, &c.

SEC. 7. Every guardian appointed as aforesaid, shall have the care and management of the estate of the minor, and shall continue in office until such minor shall arrive at the age of twenty-one years, or until the guardian shall be discharged according to law.

Powers and duties of guardians.

SEC. 8. Every such guardian shall give bond, with surety or sureties, to the judge of probate, in such sum as the judge shall order, with condition as follows :

Bond of guardian.

1. To make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same into the probate court at such time as the judge shall order :

2. To dispose of and manage all such estate and effects according to law, and for the best interest of the ward, and faithfully to discharge his trust as such guardian :

3. To render an account on oath, of the property in his hands, including the proceeds of all the real estate which may be sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge of probate shall direct : and,

4. At the expiration of his trust to settle his accounts with the judge of probate, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

SEC. 9. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education, in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the probate court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

When expenses of education to be defrayed from income of property of minor.

SEC. 10. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time ; and every such testamentary guardian shall have the same powers, and shall perform the same duties, with regard to the person and estate of the ward, as a guardian appointed by the judge of probate.

Appointment of guardian by will

SEC. 11. Every such testamentary guardian shall give bond in like

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When testamen-
tary guardian to
give bond.

manner, and with like condition, as is herein before required of a guardian appointed by the judge of probate; provided, that when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or from (*for*) other sufficient cause, the judge of probate shall think proper to require it.

Powers of courts
to appoint guar-
dians or next
friends to prose-
cute or defend
suits, &c.

SEC. 12. Nothing contained in this chapter shall impair or affect the power of any court of common law, probate court, court of chancery, or court of a justice of the peace, to appoint guardians to defend the interests of minors impleaded in such court, or interested in any matter there pending, nor their power to appoint or allow any person as next friend for a minor, to commence, prosecute or defend any suit in his behalf.

Application for
guardian of in-
sane person.

SEC. 13. When the relations or friends of any insane person, or of any person who, by reason of extreme old age or other cause, is mentally incompetent to have the charge and management of his property, shall apply to the judge of probate to have a guardian appointed for him, the judge shall cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than fourteen days before the time so appointed.

12 Mass., 222,
1840, p. 65, § 19.

Hearing.

SEC. 14. If, after a full hearing and examination upon any such application, it shall appear to the judge of probate that the person in question is incapable of taking care of himself and managing his property, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Powers and du-
ties of such
guardian.

SEC. 15. Every guardian so appointed as provided in the preceding section, shall have the care and custody of the person of his ward, and the management of all his estate, until such guardian shall be legally discharged; and he shall give bond to the judge of probate, in like manner, and with the like condition, as is before prescribed with respect to the guardian of a minor.

When guardian
may be appoint-
ed for spend-
thrift.

SEC. 16. When any person, by excessive drinking, or by gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his estate, as to expose himself or his family to danger of want or suffering, or the county to charge or expense for the support of himself or his family, any superintendent of the poor of the county, or director of the poor, or justice of the peace of the township of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the judge of probate, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

12 Pick. 152.

Notice to sup-
posed spend-
thrift.

SEC. 17. The judge of probate shall cause notice to be given to such supposed spendthrift, of the time and place of hearing the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the court that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Copy of com-
plaint may be filed
with register of
deeds.
3 Pick., 229.

SEC. 18. After the order for notice has been issued, the complainant may cause a copy of the complaint, with the order for such notice, to be filed in the office of the register of deeds for the county, and if a guardian shall be appointed upon such application, all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of real or personal estate, made by such spendthrift after the filing

of a copy of such complaint and order as aforesaid, and before the termination of the guardianship, shall be utterly void.

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SEC. 19. When a guardian shall be appointed for an insane person or a spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Allowance for expense of defending.

SEC. 20. Every guardian appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to the judge of probate, in like manner, and with like condition, as is hereinbefore directed with respect to the guardian of an insane person.

Powers and duties of guardian of spendthrift.
5 Mass., 427.

SEC. 21. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate, upon obtaining license for the sale thereof and disposing of the same in the manner provided by law.

Guardian to pay debts of ward, out of his estate.

SEC. 22. Every such guardian shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose as guardian or next friend.

Guardian to settle accounts, and collect debts of ward.

SEC. 23. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any; and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward, and his family if there be any.

How estate to be managed.

SEC. 24. The guardian may join in and assent to a partition of the real estate of the ward, in the cases, and in the manner provided by law, and he may also assign and set out dower in the said estate to any widow entitled thereto.

Guardian may assent to partition and assign dower.

SEC. 25. Upon the taking of any inventory required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of the ward, in like manner as is directed with respect to executors and administrators.

Appraisal of estate, and personal estate, how disposed of.

SEC. 26. The judges of probate in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after such notice to all persons interested therein as the judge of probate shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or other corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the said pro-

Transfer of stocks, &c.

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Removals and
resignations of
guardians.

bate court may make such further orders, and give such directions, as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

SEC. 27. When any guardian, appointed either by a testator or the judge of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to such guardian, and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and upon the death of any guardian, the judge of probate may appoint another in his place.

Marriage of female ward terminates guardianship. Discharge of guardian in certain cases.

SEC. 28. The marriage of any female who is under guardianship as a minor, shall terminate such guardianship; and the guardian of any insane person, spendthrift, or other person, may be discharged by the judge of probate, when it shall appear to him, on the application of the ward or otherwise, that such guardianship is no longer necessary.

When new bond to be given, &c.

SEC. 29. The judge of probate may require a new bond to be given by any guardian whenever he shall deem it necessary, and may discharge the existing sureties from future responsibility, after due notice given as such court may direct, when it shall satisfactorily appear that no injury can result therefrom to those interested in the estate.

Bond may be put in suit.

SEC. 30. Any bond given by a guardian may be put in suit by order of the judge of probate, for the use and benefit of the ward, or of any person interested in the estate; and the proceedings in such suit shall be conducted in like manner as is provided with respect to suits on the bonds of executors or administrators.

Within what time action to be brought against sureties.

SEC. 31. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within four years from the time when the guardian shall have been discharged; provided, that if at the time of such discharge, the person entitled to bring such action shall be out of the state, or under any legal disability to sue, the action may be commenced at any time within four years after the return of such person to the state, or after such disability shall be removed.

Proceedings in case of embezzlement, &c.

SEC. 32. Upon complaint made to the judge of probate by any guardian, or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument in writing, belonging to the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardian for minors, &c., residing without the state.

SEC. 33. When any minor or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this state, and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the judge shall order,

and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

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SEC. 34. Every guardian appointed according to the provisions of the preceding section, shall have the same powers, and perform the same duties with respect to any estate of the ward that shall be found within this state, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by force of this chapter.

Powers and duties of such guardians.

SEC. 35. Every such guardian shall give bond to the judge of probate, in like manner, and with the like condition, as is hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state.

Bond.

SEC. 36. The guardianship which shall be first lawfully granted, of any person residing without the state, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

Extent of guardianship of absent minors, &c.

SEC. 37. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services, as the court in which his accounts are settled, shall deem to be just and reasonable.

Compensation of guardians.

SEC. 38. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

Account of joint guardians.

SEC. 39. The word "spendthrift," in all the provisions relating to guardians and wards, contained in this or any other statute, is intended to include every person who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery.

Word "spendthrift" defined.

CHAPTER 87.

OF MASTERS, APPRENTICES AND SERVANTS.

SECTION 1. Every male infant, and every unmarried female under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may, of his or her own free will, bind himself or herself in writing, to serve as clerk, apprentice or servant, in any profession, trade or employment, if a male, until the age of twenty-one years, and if a female, until the age of eighteen years, or until her marriage within that age, or for any shorter time; and such binding shall be as valid and effectual as if such infant was of full age, at the time of making such engagement.

Infants may bind themselves as apprentices, &c., for what terms.

SEC. 2. Such consent shall be given,

1. By the father of the infant. If he be dead, or be not in a legal capacity to give his consent, or if he shall have abandoned and neglected to provide for his family, and such fact be certified by a justice of the peace of the township, and endorsed on the indenture, then,

Consent by whom to be given.

2. By the mother. If the mother be dead, or be not in a legal capacity to give such consent, or refuse, then,

3. By the guardian of such infant duly appointed. If such infant

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have no parent living, or none in a legal capacity to give consent, and there be no guardian, then,

4. By the directors of the poor, or any two justices of the peace of the township where such infant shall reside.

How consent to
be signified.
5 Cowen, 170.
10 J. R., 99.

SEC. 3. Such consent shall be signified by the person or officers entitled to give the same, by writing at the end of, or endorsed upon each part of the indentures, signed by such person or officers, and not otherwise.

Indentures.

SEC. 4. No minor shall be bound as aforesaid, unless by indentures in two parts, sealed and delivered by both parties.

When county
superintendents
of the poor may
bind minors.

SEC. 5. The county superintendents of the poor, in the several counties, may bind out any child, under the ages above specified, who shall be sent to any county poor house, or who is or shall become chargeable, or whose parent or parents shall become chargeable to such county, to be clerks, apprentices, or servants, until such child, if a male, shall be twenty-one years old, and if a female, shall be eighteen years old, or until her marriage within that age; which binding shall be as effectual as if such child had bound himself or herself with the consent of his or her father.

13 J. R., 270.

When directors
of poor may
bind.

SEC. 6. The directors of the poor of any township or city, may also bind out any such child, who, or whose parent or parents shall become chargeable to the county, and who shall be supported in their township, with the consent in writing of one of the county superintendents of the poor.

Age of minor to
be inserted in in-
dentures.

SEC. 7. The age of every infant, bound pursuant to the provisions of this chapter, shall be inserted in the indentures, and shall be taken to be the true age without further proof thereof, and whenever any public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

Counterpart,
where to be de-
posited. Provis-
ions to be inser-
ted.

SEC. 8. The counterpart of any indentures executed by the county superintendents of the poor, shall be by them deposited in the office of the clerk of the county; and the counterpart of any such indentures executed by the directors of the poor, shall be by them deposited in the office of the clerk of their township or city; and provision shall be made in every such indenture for teaching the minor to read, write and cypher, and for such other instruction, benefit and allowance, as such superintendents or directors may think reasonable.

Moneys, &c.,
paid by master,
to be for use of
minor.

SEC. 9. All considerations of money or other things paid or allowed by the master, upon any indenture of apprenticeship or service, made in pursuance of this chapter, shall be paid or secured to the sole use of the minor bound thereby.

Who to inquire
into treatment of
children, and to
defend them.

SEC. 10. Parents and guardians, and superintendents and directors of the poor, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall be bound by their predecessors in office, and defend them from all cruelty, neglect, or breach of the indentures on the part of their masters.

Complaint
against master
for misconduct.

SEC. 11. In case of any such misconduct or neglect of the master, a complaint may be filed by the parent or guardian, or by the superintendents or directors of the poor, in the probate court for the county in which the master resides, setting forth the facts and circumstances of the case, and the court, after having caused such notice as it shall deem reasonable, to be given to the master, shall proceed to hear and determine the cause.

SEC. 12. After a full hearing of the parties, or of the complainant alone in case the master shall neglect to appear, the court may make an order or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the proceeding against the master, and may issue execution therefor accordingly, and the minor may be bound out anew, unless such order be reversed on appeal.

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When court may discharge minor and award costs against master.

SEC. 13. If the complaint be not sustained, the court shall order costs to be paid by the complainant to the master, and issue execution therefor accordingly; excepting, that if such complaint be made by the superintendents or directors of the poor, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

When costs to be awarded against complainant.

SEC. 14. Every master shall also be liable, whether such complaint shall have been filed or not, to an action on the indenture, for the breach of any covenant on his part therein contained; which action shall be brought in the name of the minor by his guardian or next friend, or by himself, after his majority.

Master, when liable to action.

SEC. 15. If such action be brought, and a recovery be had, during the minority of such apprentice or servant, the damages recovered in such action, after paying the necessary charges of the prosecution, shall be the property of the minor, and may be appropriated to his use, or invested for his benefit in the same manner as any other property belonging to such minor.

Damages recovered, how disposed of.

SEC. 16. No such action shall be maintained by any apprentice or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Within what time action to be commenced.

SEC. 17. If judgment in such action shall, upon the final determination thereof, be rendered for the plaintiff, the court in which the same is prosecuted may thereupon, by an order to be entered in its minutes, discharge the minor from his apprenticeship or service, if it shall not have been already done in the manner before provided, and the minor may thereupon be bound out anew.

If judgment be rendered for plaintiff, minor may be discharged.

SEC. 18. If any apprentice or servant bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before such justice.

Proceedings if apprentice or servant leaves the service of his master.

SEC. 19. If such complaint be supported, the justice may order the offender to be returned to his master, or may commit him to the common jail or house of correction, there to remain for a term not exceeding twenty days, unless sooner discharged by his master.

Justice may order offender to be returned, or may commit him.

SEC. 20. The justice's warrant, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, although it may be in any other county in the state.

Effect of warrant.

SEC. 21. All the costs incurred on any such process against an apprentice or servant, shall be paid in the first instance by the master; and if the complaint be supported, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

Who to pay costs.

SEC. 22. If any such apprentice or servant shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the probate court of the county in which he resides, and the court, after causing such notice as it shall

Complaint against apprentice for misbehavior and proceedings thereon.
2 Pick., 451.

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When court may
discharge master
from obligation,
&c.

Minor discharg-
ed by death of
master.

Preceding pro-
visions apply to
mistresses as
well as masters.

Common law
right not affect-
ed.
7 Mass., 147.
1 Mason 78.
8 J. R., 328.

Mother of illegit-
imate child may
consent to bind-
ing.

deem reasonable to be given to the parent or guardian who consented to the binding of such apprentice or servant, or to the officers who bound him, or their successors in office, shall proceed to hear and determine the cause.

SEC. 23. After a full hearing of the parties, or of the complainant, if the adverse party shall neglect to appear, the court may make an order or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of the suit, and the amount of such costs may be recovered in an action against the minor, with interest thereon, after he shall have arrived at full age, and such minor may be bound out anew.

SEC. 24. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of the master, but the minor shall be thenceforth discharged therefrom, and may be bound out anew.

SEC. 25. An indenture of apprenticeship or service, made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or man, capable in law of contracting, and all the foregoing provisions shall apply as well to mistresses as to masters.

SEC. 26. Nothing contained in this chapter shall prevent, or affect the right of a father, by the common law, to assign or contract for the services of his children for the term of their minority, or of any part thereof.

SEC. 27. The mother of an illegitimate minor child shall have power to give the consent authorized in this chapter, to the binding of such child, during the lifetime of the putative father, as well as after his death.

TITLE XXI.

TITLE XXI.
CHAPTER 88.

OF COURTS AND JUDICIAL OFFICERS.

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- Chapter 88. Of the Supreme Court.
 Chapter 89. Of the Circuit Courts.
 Chapter 90. Of the Courts of Chancery.
 Chapter 91. Of the Probate Courts.
 Chapter 92. Of County Courts.
 Chapter 93. Of Courts held by Justices of the Peace.
 Chapter 94. Of Criminal Proceedings before Justices of the Peace.
 Chapter 95. Of Circuit Court Commissioners, Attorneys, and other Judicial Officers.
 Chapter 96. General Provisions concerning Courts, and the Powers and Duties of certain Judicial Officers.
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CHAPTER 88.

OF THE SUPREME COURT.

SECTION 1. The supreme court shall consist of four judges, one of whom shall be styled the chief justice, and the other three of whom shall be styled associate justices, who shall be appointed and shall hold their offices as provided in the constitution of this state. Judges of supreme court. Const. art. 6, § 2.

SEC. 2. The said court shall have original and appellate jurisdiction of all such matters and suits at law and in equity, as may be lawfully brought before it; and shall also have jurisdiction of suits, actions and matters brought before it by writ of certiorari or writ of error, when the same shall be allowed by law, to any inferior court, to magistrates and other officers, as well in cases of prosecution for any offence, misdemeanor or penalty, in the name of the people of this state, as in other cases; and shall have authority to issue writs of error, prohibition, certiorari, mandamus, quo warranto, habeas corpus, procedendo, supersedeas, and all other process which may be necessary for the due execution of the law, and the administration of justice, and the full and perfect exercise of its jurisdiction, and to hear and determine thereon, according to the principles and usages of law and equity. Jurisdiction.

SEC. 3. The supreme court shall have the general supervision of all courts of law of inferior jurisdiction, to prevent and correct errors and abuses therein, when no other remedy is expressly provided by law. Supervision of inferior courts.

SEC. 4. There shall be four several terms of the supreme court held in each year, commencing as follows, to wit: On the first Mon- Terms of the court.

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Where terms to
be holden.

days of January, May and July, and the third Monday of October; which said terms shall respectively be called the January, May, July, and October terms of said court.

SEC. 5. The terms of said court shall be held as follows:

1. The January term in each year, at the supreme court room, in the city of Detroit, in the county of Wayne:

2. The May term in each year, at the court house in the village of Kalamazoo, in the county of Kalamazoo:

3. The July term in each year, at the court house in the village of Jackson, in the county of Jackson:

4. The October term in each year, at the court house in the village of Pontiac, in the county of Oakland.

Special terms.

SEC. 6. The said court may direct a special term thereof to be held at either of the places above named, whenever they shall deem it necessary, by an order therefor, which they shall cause to be published at least thirty days before the time appointed, in some paper printed at the seat of government.

Exercise of ap-
pellate jurisdic-
tion.

SEC. 7. At any of the terms of said court, it shall exercise its appellate jurisdiction in suits in equity and at law, and in probate cases, originating in any part of the state.

Court may or-
der argument at
any term.

SEC. 8. Before (*upon*) all questions arising under the exercise of such jurisdiction, when argument of counsel may be desired or intended by the parties, or may be requested by the court, the court may order such argument to be had at any of said terms.

When clerk to
open and adjourn
court.

SEC. 9. If neither of the said justices shall attend on the first day of any term of said court, it shall be the duty of the clerk thereof, at any time after four o'clock in the afternoon of such day, to open the said court by proclamation, and immediately to adjourn the same to the next day, and so to open and adjourn the said court from day to day, until the justices thereof, or one of them, shall appear, when the court shall proceed to business, if a quorum be present, as if it had been opened and adjourned by a justice thereof; and any two of said justices shall constitute a quorum for business.

When justice at-
tending may ad-
journ from day
to day, or with-
out day.

SEC. 10. If two of said justices shall not attend, the justice attending, may, in his discretion, adjourn the said court from day to day, until a quorum shall be present; or, if he shall deem it proper, he may adjourn the said court without day; and if no justice shall attend before the expiration of the third day in term, the clerk shall adjourn said court without day.

Attendance of
sheriff, constab-
les, &c.

SEC. 11. The sheriff of the county in which any term of the court may be held, shall, before the commencement of such term, summon not more than two constables of his county to attend the same; and the sheriff and constables so summoned, shall attend the court during its sitting; and the compensation allowed by law for such attendance, together with all moneys paid by such sheriff for fuel and other necessary expenses, which shall be certified by the clerk of the court, and he deemed reasonable by the auditor general, shall be paid out of the treasury of this state.

Removal of re-
cords and pa-
pers.

SEC. 12. The justices of the supreme court may, from time to time, direct the removal of such records and papers in any cause, as they may deem proper, from one clerk's office to another.

Establishing and
revising rules of
practice.

SEC. 13. The justices of the supreme court shall have power, and it shall be their duty, within three months after this chapter shall take effect, by general rules to establish, and from time to time thereafter

to modify and amend the practice in said court, and in the circuit courts, at law and in equity, in the cases not provided for by any statute; and they shall, once at least in every two years thereafter, if necessary, revise the said rules, with the view to the attainment, so far as may be practicable, of the following improvements in the practice:

1. The abolishing of all fictions and unnecessary process and proceedings:
2. The simplifying and abbreviating of the pleadings and proceedings:
3. The expediting of the decision of causes:
4. The diminishing of costs:
5. The remedying of such abuses and imperfections as may be found to exist in the practice; and,
6. Abolishing all unnecessary forms and technicalities in pleadings and practice.

SEC. 14. All writs and process issuing out of said court, shall run into, and may be executed in any county in this state; and the seal of said court affixed to, or impressed upon any writ or process in any suit or proceeding therein, shall be conclusive evidence that such writ or process was issued by said court, in all cases where such writ or process may lawfully be issued.

Process to run into any county.

SEC. 15. The supreme court shall have power, in all such cases as shall be deemed proper, to compel any party to a suit pending therein, to produce and discover books, papers and documents in his possession or power, relating to the merits of any such suit, or of any defence therein.

Power to compel discovery of books, &c.

SEC. 16. The court shall, by general rules, prescribe the cases in which such discovery may be compelled, where the same are not herein provided; and the costs of such proceedings shall always be awarded in the discretion of the court.

Rules in relation to discovery.

SEC. 17. To entitle a party to any such discovery, he shall present a petition to the court, or to any justice thereof in vacation, verified by oath, upon which an order may be granted by the court or such justice for the discovery sought, or that the party against whom the same is sought, show cause why the prayer of such petition should not be granted.

Petition for discovery and order thereon.

SEC. 18. Every such order may be vacated by the justice granting the same, or by the court,

When order may be vacated.

1. Upon satisfactory evidence that the same ought not to have been granted:

2. Upon the discovery sought being made:

3. Upon the party required to make the discovery, denying on oath, the possession or control of the books, papers or documents ordered to be produced.

SEC. 19. The court shall provide by general rules, for the staying of the proceedings of any party against whom such discovery shall have been ordered, until the same shall have been complied with or vacated.

Staying proceedings when discovery ordered.

SEC. 20. In case of the party neglecting or refusing to obey any such order for discovery, within such time as may be deemed reasonable, the court may non-suit him, or may strike out any plea or notice he may have given, or may debar him from any particular defence in relation to which such discovery was sought; and the power of the

Remedies for neglect, &c., to make discovery.

TITLE XXI. CHAPTER 88.	court to compel such discovery, shall be confined to the remedies herein provided, and shall not extend to authorize any other proceedings against the person or property of the party so refusing or neglecting.
Effect of books, &c., produced.	SEC. 21. The books, papers and documents produced under any order made in pursuance of the preceding sections, shall have the same effect, when used by the party requiring them, as if produced upon notice, according to the practice of the court.
Court to prescribe practice in certain cases.	SEC. 22. The supreme court shall, amongst other things, regulate and prescribe the practice therein, and in the circuit courts, when the same is not prescribed by any statute, in relation to bills of exceptions; cases made by the parties; special verdicts; granting new trials; motions in arrest of judgment; taxation of costs; giving notice of special motions, and of such other proceedings as the court may think proper; staying proceedings when necessary to prevent injustice; and the hearing of motions, imposing terms in their discretion on granting such motions.
To prescribe certain powers of circuit court commissioners, &c.	SEC. 23. In cases not otherwise provided for, the supreme court shall have power, from time to time, by general rules, to prescribe the cases in which the circuit courts or any judge thereof, or circuit court commissioners may grant orders to stay proceedings in causes and matters pending in the circuit courts, and upon process issued therefrom, the effect of such orders; and the terms and conditions on which they shall be granted.
When judgment of court below to be affirmed.	SEC. 24. When the judges of the supreme court shall be equally divided in opinion upon any case submitted to them, brought before such court by appeal, certiorari or writ of error, if two judges of the supreme court shall be in favor of affirming the judgment or decree of the court below, such judgment shall thereupon be confirmed, (<i>affirmed.</i>)
Salary of judges.	SEC. 25. Each of the justices of the supreme court shall receive an annual salary of one thousand five hundred dollars, payable quarter yearly out of any moneys in the state treasury belonging to the general fund, not otherwise specially appropriated by law.
Judges not to practice.	SEC. 26. No justice of the supreme court shall practice as attorney, solicitor or counsellor, in any court of this state.
Seals of the court.	SEC. 27. The seals of the supreme court now in use, shall continue to be used therein, and with such other seals as may be devised for that purpose according to law, shall be the seals of said court.
Arguments in supreme court may be submitted in writing.	SEC. 28. All arguments of demurrers, cases, bills of exceptions, appeals, motions, and other matters in the supreme court, may, at the option of the respective parties, be submitted to said court in writing, subject to such rules as the said court may prescribe, except when such court shall, by general or special rule or order, otherwise direct.
Within what time cases to be decided.	SEC. 29. All cases in the supreme court shall be decided and disposed of before or during the first week of the term next succeeding the one when the same is argued or submitted.
Judges to deliver copies of decisions to reporter.	SEC. 30. On or before the January term in each year, the judges of said court shall deliver to the reporter of said court, copies of their decisions on all questions determined by said court during the preceding year.

CIRCUIT COURTS.

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CHAPTER 89.

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CHAPTER 89.

OF THE CIRCUIT COURTS.

SECTION 1. This state shall be divided into four judicial circuits, Judicial circuits. to be denominated the first, second, third, and fourth circuits respectively, as follows :

1. The first circuit shall be composed of the counties of Monroe, Wayne, Macomb, Lapeer, St. Clair, Mackinaw and Chippewa :

2. The second circuit shall be composed of the counties of Washtenaw, Jackson, Calhoun, Lenawee, Hillsdale, Branch and Eaton :

3. The third circuit shall be composed of the counties of Kalamazoo, Van Buren, St. Joseph, Cass, Berrien, Allegan, Barry, Kent and Ottawa :

4. The fourth circuit shall be composed of the counties of Oakland, Livingston, Ingham, Shiawassee, Clinton, Saginaw, Genesee and Ionia.

SEC. 2. Each of the justices of the supreme court shall, twice in each year, except in the cases hereinafter otherwise provided, hold a circuit court in each of the counties in the circuit designated in his appointment, and in the performance of such duties shall be denominated circuit judge.

Circuit courts—how often to be held.

SEC. 3. It shall not be necessary to hold the second term of the circuit court appointed to be holden in any year, in either of the counties of Chippewa, Mackinaw, Saginaw, Shiawassee, Clinton, Ionia, Barry, Eaton, Ingham, Ottawa, Van Buren and Allegan, unless the sheriff and county clerk of any or either of said counties shall, at or before the time fixed by law for the drawing of jurors, determine that it is necessary.

When not necessary to hold court in certain counties.

SEC. 4. In case such sheriff and county clerk shall deem it necessary that a court be held and a petit jury be summoned to attend such second term in any year, they shall make an order that such jury be drawn and summoned, and file the same with the clerk, and immediately transmit a notice of the making of such order to the justice of the supreme court appointed to hold the circuit courts in their county, and it shall thereupon be the duty of such justice to attend such second term.

When justice to attend on receiving notice.

SEC. 5. Each of the said justices shall, within one month after this chapter takes effect, fix and appoint the times of holding the several circuit courts within his circuit, for the period of two years ; which courts, when so fixed, shall remain unaltered for two years ; and he shall in like manner, at least two months next before the expiration of the said two years, appoint the said courts for the ensuing two years, and so on, for every two succeeding years thereafter.

Appointment of terms.

SEC. 6. The place of holding such circuit courts in each county, shall be the court-house therein, if there be one, and if there be none, then such courts shall be holden at such place therein as the sheriff and county clerk thereof shall order.

Place of holding circuit courts.

SEC. 7. Every justice of the supreme court shall transmit to the clerk of each county within his circuit, a copy of every appointment of circuits made by him, immediately upon making the same ; which shall be filed and preserved by such clerk ; and every such appointment of circuits shall be published in some paper printed at the seat of government, once in each week for four successive weeks, and the last publication thereof shall be at least one month before the holding of any circuit court in pursuance thereof.

Appointment of circuits to be transmitted to clerks, and published.

**TITLE XXI.
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Abstract of appointments to be arranged and published.

Jurisdiction of circuit courts.

Submission of facts, and judgment thereon, &c.

Appellate jurisdiction of circuit courts.

Changing venue and proceedings thereon.

Rules of practice in circuit courts.

Journal of proceedings to be kept and signed.

SEC. 8. The publisher of the said paper shall arrange such appointments under one head, and publish in such paper an abstract thereof, designating the name of each county in each of said circuits, and the times appointed for holding the courts therein; and the expense of such publication shall be paid out of the state treasury.

SEC. 9. The said circuit courts, within and for their respective counties, shall have and exercise original and exclusive jurisdiction of all civil actions and remedies at law and in equity, and of all prosecutions in the name of the people of this state for crimes, misdemeanors, offences and penalties, except in cases where exclusive jurisdiction shall be given to or possessed by some other court or tribunal, in virtue of some statutory provision, or of the principles and usages of law, and shall have such appellate jurisdiction and powers as shall be given by law; and the said courts shall also have and exercise within and for their respective counties, all the powers usually possessed and exercised by courts of record at the common law, and by the court of chancery as heretofore established, for the full exercise of the jurisdiction hereby conferred.

SEC. 10. Parties to any civil cause pending in any circuit court, may agree upon the facts in such cause and submit the same to the court; and such court shall thereupon render judgment in the cause upon the facts so submitted; and if either party shall be dissatisfied with such judgment, a bill of exceptions to the opinion of the court may be tendered, and the judgment removed to the supreme court by a writ of error.

SEC. 11. The said circuit courts shall have power, and it shall be their duty respectively, to hear and determine all such matters as may be lawfully brought into said courts by appeal or otherwise.

SEC. 12. Each of the said courts, upon good cause shown, may change the venue in any cause pending therein, and direct the issue to be tried in the circuit court of another county, and make all necessary rules and orders for the certifying and removing such cause, and all matters relating thereto, to the court in which such issue shall be ordered to be tried; and the court to which such cause shall be so removed, shall proceed to hear, try and determine the same, and execution may thereupon be had in the same manner as if the same had been originally prosecuted in that county, except that in all criminal cases, when the defendant shall be convicted, and be sentenced to imprisonment in a common jail, the court awarding sentence shall direct that the defendant be imprisoned in the common jail of the county in which the prosecution was commenced.

SEC. 13. The said courts shall, from time to time, make rules for regulating the practice of the said courts at law or in equity, and conducting the business thereof, until the supreme court shall prepare and transmit to the said circuit courts a code of rules to be adopted and used therein; and when such rules have been so prepared and transmitted, they shall govern the circuit courts and the practice and proceedings thereof, until altered by the supreme court, or by their authority.

SEC. 14. Each of the clerks of said courts shall keep a journal of the proceedings of the court, under the direction of the presiding judge, and all entries therein shall be read over in open court, by the clerk, from day to day, and shall be corrected when necessary, and signed by the presiding judge.

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CHAPTER 89.Justices may
hold circuit in
any part of the
state.

SEC. 15. Each justice of the supreme court shall have power to hold and preside in any circuit court in this state, either for the whole time such court shall continue, or for any part of that time; and in case either of said justices shall be incapable for any cause, of holding any of said courts in his circuit, it shall be the duty of any other of said justices, on being notified thereof, to attend such courts, if he can do so without interfering with the courts previously appointed by him.

When and how
special terms to
be ordered.

SEC. 16. Whenever the circuit court for any county shall fail, and the chief justice of the supreme court, or if he be absent, or if his office be vacant, the senior justice thereof shall think the public good requires the holding of a special term of said circuit court, it shall be the duty of such justice, by an order under his hand, to appoint the holding of a special term thereof in such county, at such time as he may designate in such order, not less than thirty days from the date thereof, and to assign one of the justices of the supreme court to hold the same.

Notice of order,
and drawing ju-
rors.

SEC. 17. The justice making such order shall forthwith transmit the same to the clerk of the county within which such court is appointed to be held, who shall file the same in his office, and immediately give notice to the sheriff and prosecuting attorney, and jurors shall be drawn and summoned to attend such court as in other cases.

When clerk or
sheriff to adjourn
court to next
day.

SEC. 18. If no one of the justices of the supreme court shall come to the place where any circuit court is appointed to be held, the sheriff or clerk of such county shall open such court by proclamation, and forthwith adjourn the same until nine o'clock in the forenoon of the next day.

When court to
be adjourned
without day.

SEC. 19. If one of the justices of the supreme court shall attend at such place at any time before six o'clock in the afternoon of such second day, the said court shall be opened and proceed with the business before it; otherwise the said sheriff or clerk shall open said court as aforesaid, and adjourn the same without delay, and the clerk shall note the facts on the journal of the proceedings of the court.

Recognizances
to be continued
when court fails.

SEC. 20. All causes and matters pending in any circuit court which shall have failed to be held, shall stand continued until the next term; and all persons bound by recognizance or otherwise to appear at any such court, either as witnesses, or parties to any proceedings cognizable therein, shall be bound to appear at the next circuit court appointed to be held in such county, and all such recognizances shall continue in force and be binding and obligatory upon the parties thereto, unless a new recognizance, approved according to law, shall be entered into for such appearance.

Process.

SEC. 21. All writs and process issuing out of and returnable in the said circuit courts, shall bear date on the day when the same shall issue, and shall be tested either in the name of the circuit judge, or in the name of the chief justice of the supreme court.

Seals of the cir-
cuit courts.

SEC. 22. The seals now in use in the several circuit courts of this state, shall continue to be the seals of the said courts respectively, until others shall be provided according to law,

Circuit courts to be courts of chancery. Their style.

SECTION 1. The several circuit courts of this state shall be courts of chancery within and for their respective counties, the powers of which shall be exercised by the circuit judges thereof; and the name and style of such courts sitting in chancery shall be, "the circuit court for the county of _____, in chancery."

Court of chancery abolished, and matters pending therein transferred to supreme court.

SEC. 2. The court of chancery as now established by law, is hereby abolished; and all causes and matters whatsoever pending therein at the time this chapter takes effect, shall be, and the same are hereby transferred to the supreme court, to be proceeded in, heard and determined by said court, within such judicial circuits of said court as the justices thereof shall direct; such direction to be given in and by a special order, signed by said justices, and published daily and weekly in two newspapers printed in the city of Detroit, for four weeks next before the day on which this chapter takes effect: provided however, that any such cause or matter may be transferred to any circuit court for any county of the state, by agreement in writing of the parties thereto, designating such court, and filed with the register in chancery of the circuit to which such cause belongs, not less than twenty days before the time herein provided for the first publication of the order aforesaid. And the said supreme court, or such circuit court, as the case may be, to whom any such cause or matter may be transferred as aforesaid, shall, from the day this chapter takes effect, have the full chancery power and authority, so far as may be necessary to proceed in, hear and determine the same.

Proviso.

Transfer of papers, securities, moneys, &c.

SEC. 3. Every register in chancery of the court hereby abolished, in whose custody, or under whose control any books or papers, relating or properly belonging to any matter or cause so transferred as aforesaid, may be at the time of such transfer, shall, within ten days after the first publication of the aforesaid order, or the filing of such agreement as aforesaid, transmit to the clerk or register of the court to which such matter or cause shall have been transferred, all books and papers belonging or relating to such matter or cause, in his possession or under his control; and all moneys, stocks, mortgages and other securities, remaining vested in any such register of the court herein abolished, at the time this chapter takes effect, pending, belonging or relating to any matter or cause transferred as aforesaid, shall forthwith upon such transfer, pass to and vest in the register of the court to which such matter or cause shall have been transferred; and every bank holding any such moneys or securities on deposit, shall forthwith upon such transfer carry the same to the credit and account of the clerk or register of the court to which such matter or cause shall have been transferred. All other moneys and securities which, when this chapter takes effect, shall be on deposit in any bank to the credit of any register of the court hereby abolished shall, unless otherwise ordered and directed by the circuit judge of the circuit in which such bank is situated, be by said bank carried to the credit and account of the justices of the supreme court, and kept subject to the order and disposal of the said supreme court.

Clerks of circuit courts to be registers in chancery.

SEC. 4. The clerk of the circuit court in each county, shall be, by virtue of his office, the register in chancery for such county, and shall

attend every term of the circuit court in chancery held within such county.

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SEC. 5. Each of said registers, before entering upon the duties of his office, shall execute a bond to the people of this state, in such sum as the circuit judge shall direct, not less than five thousand dollars, with at least two sureties to be approved by the circuit judge, conditioned for the faithful performance of the duties of his office.

Bonds of registers.

SEC. 6. Such bonds shall be filed with the auditor general, and if either of them become forfeited, the circuit judge shall direct the same to be prosecuted, and the moneys recovered shall be applied under his direction for the indemnity of the persons aggrieved, in proportion to their respective losses.

Where bonds to be filed, and when prosecuted &c.

SEC. 7. The registers shall severally have the custody of the seals of the court, and of all the minutes, books and papers deposited in their respective offices, and it shall be their duty carefully to attend to the management and preservation thereof.

Registers to have custody of seals, &c.

SEC. 8. All moneys brought into the court for or by any suitor, and paid to the register, shall be deposited in such banks, or safely kept in such other manner as the court shall direct.

Moneys brought into court, how kept.

SEC. 9. On the first day of the term of the court, the register at the place where the same is held, shall exhibit the account kept by him of all such moneys, and also his bank account, in case such moneys shall have been deposited in a bank.

Registers to exhibit accounts.

SEC. 10. Every such bank account shall be accompanied by a certificate of the cashier of the bank in which the deposit is made, that the total amount stated therein to be deposited, is actually in the bank, placed to the credit of such register as register in chancery of the proper county, and not mingled with any other account.

Certificate of cashier of bank.

SEC. 11. No money brought or paid into the court, and deposited in any bank to the credit of any officer of the court, shall be paid out by such bank, without the production of the order of the court, authenticated by the signature of the circuit judge.

Moneys not to be paid out without order of court.

SEC. 12. Each circuit judge may cause any moneys brought into court pursuant to any order made by him, to be invested or placed at interest, as he shall think proper; and the party bringing money into court pursuant to any order thereof, shall in all cases be discharged from all further liability to the extent of the money so brought into court.

Circuit judge may cause certain moneys to be invested.

SEC. 13. All stocks and securities taken by order of the court for the benefit of suitors therein, shall, if directed to be taken in the name of any officer of the court, be taken in the name of the register of the court in whose office the bill or petition in the case shall have been filed; and every such register shall keep just and full accounts of all moneys, stocks and securities which shall come to his hands by virtue of his office, and of all payments and investments made by him.

Certain securities to be taken in name of register, who shall keep account, &c.

SEC. 14. On the death, removal from office, or resignation of a register, all stocks, mortgages and other securities vested in him at the time of such death, removal or resignation, by virtue of any of the proceedings of the court, shall vest in his successor in office in like manner as if such register had been a corporation sole, with right of succession.

On death, &c., of register, securities to vest in successor.

SEC. 15. All moneys deposited in any bank, to the credit of such register, shall, upon his death, removal from office, or resignation, be carried to the account of his successor in office; and every such bank shall take notice thereof, and transfer such accounts accordingly.

When moneys in bank to be carried to credit of successor.

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Rules and regulations concerning moneys, &c. Sheriffs to be officers of court.

SEC. 16. Each circuit judge may, from time to time, make such rules and regulations concerning such moneys, stocks and securities, as he shall deem just and reasonable; and all such rules and regulations shall be entered in the minutes of the court.

To attend and execute orders of court.

SEC. 17. The sheriffs of the respective counties shall be officers of the circuit court in chancery, for the purpose of executing the process of the court; and the sheriff to whom any process of said court shall be directed, shall be amenable to the court in its execution, and may be punished for his disobedience or default therein, in the manner prescribed by law.

Subsequent application for injunction not to be made.

SEC. 18. The sheriff of the county in which any stated term may be held by the circuit judge, shall, upon pain of being fined in the discretion of the court, be bound to attend said court during its sitting, in such manner as the court shall direct; and the sheriff so attending may execute all the lawful orders and process of the court in any county of this state.

Persons making application contrary to law liable to fine and imprisonment, &c.

SEC. 19. If an application for an order that an injunction or writ of ne exeat issue, be made to the circuit judge, or any other justice of the supreme court, or any person authorized to grant the same, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application for the same purpose, and in relation to the same matter shall be made to any other justice of the supreme court, or any other person authorized to grant the same.

SEC. 20. If upon any such subsequent application any order be made, it shall be absolutely void, and shall be revoked by the person making it, upon due proof of the facts; and any person making such subsequent application contrary to the foregoing provisions, shall be liable to be fined or imprisoned by the court, or both, in its discretion.

Of the General Powers, Duties and Jurisdiction of the Circuit Courts in Chancery.

Powers and jurisdiction.

SEC. 21. The powers and jurisdiction of the circuit courts in chancery in and for their respective counties, shall be co-extensive with the powers and jurisdiction of the court of chancery in England, with the exceptions, additions and limitations created and imposed by the constitution and laws of this state.

Where suits to be commenced.

SEC. 22. Every suit in chancery shall be commenced in the circuit court for the county in which the property in dispute is situated, or in which one of the parties resides, if either be a resident of the state; and if neither party reside in the state, in the county where the subject matter of dispute, or some part thereof is situated; but if the subject matter is not local, and neither party resides in the state, the suit may be brought in any county.

What suits to be dismissed.

SEC. 23. Such courts shall dismiss every suit concerning property, (excepting suits between co-partners, and suits for the foreclosure of mortgages,) where the matter in dispute shall not exceed one hundred dollars, with costs to the defendant.

Creditor's bills.

SEC. 24. Whenever an execution against the property of a defendant, shall have been issued on a judgment at law, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant, and any other persons, to compel the discovery of any property or things in action belonging to the defendant, and of any property, money or

things in action due to him, or held in trust for him; and to prevent the transfer of any such property, money or things in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant.

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SEC. 25. The court shall have power to compel such discovery, and to prevent such transfer, payment or delivery, and to decree satisfaction of the amount remaining due on such judgment, out of any property, money or things in action belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery, whether the same were originally liable to be taken in execution at law or not.

Powers of court thereon.

SEC. 26. In suits for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect, as in actions at law.

Set-offs.

SEC. 27. A bill of discovery may be filed, and the defendant shall be compelled to answer such bill, where the defendant is charged with having given to another person a warrant of attorney to enter up a judgment, or with having confessed or suffered any judgment, purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such warrant of attorney or judgment is due, with intent to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same on some secret trust or confidence, or for the benefit of such defendant.

Bills for discovery of frauds in confessing judgments, &c.

SEC. 28. No answer to any bill, filed under the provisions of the preceding section, shall be read in evidence against such defendant on the trial of any indictment for the fraud charged in the bill.

When answer not to be evidence against defendant.

SEC. 29. To render the filing of a bill constructive notice to a purchaser of any real estate, it shall be the duty of the complainant to file with the register of deeds of the county in which the lands to be affected by such constructive notice are situated, a notice of the pendency of such suit in chancery, setting forth the title of the cause, and the general object thereof, together with a description of the land to be affected thereby.

Notice of pendency of suit.

SEC. 30. Each register of deeds shall enter in an index to be kept in his office, such references to the said notices, as will enable all persons interested, to search his office for such notices without inconvenience.

Register of deeds to enter reference to notices.

SEC. 31. When a bill shall be filed in chancery, other than for discovery only, the complainant may waive the answer being made on the oath of the defendant, and in such cases the answer may be made without oath, and shall have no other or greater force as evidence, than the bill.

When oath of defendant may be waived.

SEC. 32. All issues upon the legality of a marriage (except where a marriage is sought to be annulled on the ground of the physical incapacity of one of the parties,) shall be tried by a jury of the country.

Issues on legality of marriage, when to be tried by a jury.

SEC. 33. The supreme court shall have power, from time to time, by general rules of the court, to establish, alter, modify, or amend the practice of the circuit courts in chancery, in the cases not provided for by statute; and said court shall, as often as he (*it*) may deem it necessary, revise the rules of the said courts with a view to the attainment, as far as practicable, of the following improvements in the practice:

Rules of practice.

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1. The abbreviating of bills, answers and other proceedings :
2. The expediting of the decision of causes :
3. The diminishing of costs :
4. The remedying of such abuses and imperfections, as may be found to exist in the practice, in any class of suits cognizable in chancery : and,

5. The abolishing of all unnecessary forms and technicalities in the proceedings and practice of said courts.

Appointment of
receivers.
1839, p. 222, § 18.

SEC. 34. Each circuit court shall have power to appoint receivers in all cases pending in chancery, when such appointment is allowed by law, as well in vacation, as during the sessions of the court.

Application for
receiver may be
made at cham-
bers.

SEC. 35. Application for such appointment may be made to the circuit judge at chambers, and shall be heard under such regulations as may be by general or special rules prescribed.

Possessor of
lands may insti-
tute suit against
claimant.

SEC. 36. Any person having the actual possession, and legal or equitable title to lands, may institute a suit in chancery against any other person setting up a claim thereto in opposition to the title claimed by the complainant, and if the complainant shall establish his title to such lands, the defendant shall be decreed to release to the complainant all claim thereto, and pay costs, unless the defendant shall, by his answer, disclaim all title to such lands and give a release to the complainant, in which case costs shall be awarded as the court may deem just.

1840, p. 127, § 1.

Of the Terms of the Court, and the Mode of Proceeding therein.

Stated and spe-
cial terms.

SEC. 37. The stated terms of the circuit court for each county shall be deemed the stated terms of the circuit court in chancery for such county; but each circuit judge may hold as many adjourned and special terms of the circuit court in chancery in any county within his judicial circuit, as the business therein may require.

Equity calendar
at stated terms—
when to be tak-
en up.

SEC. 38. The equity calendar at any regular term of the court, shall not be taken up until the issues of fact upon the calendar have first been disposed of, unless by special order of the court.

Forms of pro-
cess, &c.

SEC. 39. The supreme court shall have authority to prescribe from time to time, the forms of all process to be issued out of the circuit courts in chancery, and until other forms are prescribed, those now in use may be continued, so far as they may be applicable.

Process, by
whom to be sign-
ed, and where
served.

SEC. 40. Process issued out of the circuit courts in chancery shall be signed by the register in chancery of the county in which it issues, and may be served only within the county, unless by order of the court.

Seal and teste of
process, &c.

SEC. 41. Every such process shall be sealed with *one* of the seal of the circuit court, and shall bear date on the day when the same shall issue; and when from its nature requiring to be executed by the sheriff of the county, shall be directed to such sheriff.

Registers to fur-
nish blank pro-
cess.

SEC. 42. It shall be the duty of every register in chancery, to furnish any solicitor of the said courts, when required, and upon payment of the fees allowed by law, blank process to appear and answer bills, and blank process to compel the attendance of witnesses before a master or commissioner, with the seal of the court impressed thereon, and with the name of such process printed or written on the body of the seal.

When court may
order defendants
appearance to
be entered.

SEC. 43. When a defendant, brought into court by writ of habeas corpus or other process, shall neglect or refuse to enter his appearance, according to the rules of the court, the court shall order his ap-



pearance to be entered, and the suit shall then proceed, as if the party had actually appeared.

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SEC. 44. In all cases not otherwise provided for by law, bills shall be taken as confessed, and orders and decrees may be made by default, according to such rules as shall be from time to time established.

Rules for taking bills as confessed, and decrees by default.

SEC. 45. Answers, demurrers, and all other pleadings and proceedings shall be filed in the office of the register with whom the bill or petition in the cause was filed, unless otherwise directed by rule or order of the court; and within such time, and under such regulations as shall be by general rule directed.

Where pleadings to be filed.

SEC. 46. When the appearance of a defendant shall have been entered, and notice thereof shall have been given, according to the practice of the court, it shall be the duty of the complainant to serve on the party so appearing, copies of the pleadings and proceedings at any time filed in the cause on the part of the complainant.

Service of copies of pleadings, on the part of complainant.

SEC. 47. It shall in like manner be the duty of the defendant, after appearance, to serve on the complainant, copies of all pleadings and proceedings so filed on the part of such defendant.

Service of copies of pleadings on the part of defendant.

SEC. 48. If the complainant or defendant shall have appeared by a solicitor, the service of the pleadings or proceedings shall be on or by such solicitor.

When service to be made on solicitor.

SEC. 49. The circuit judge may direct a commission to be issued to any person or persons, to take testimony in any cause depending in chancery; and such commission may also be issued by either of the registers in chancery, under such regulations as may be from time to time prescribed.

Commissions to take testimony.

SEC. 50. The person or persons so commissioned, shall have full authority to administer all necessary oaths or affirmations, to all witnesses examined under the commission.

Authority of commissioners.

SEC. 51. The respective parties and their counsel may be present at the examination of any witnesses produced before a master, or under a commission; and every such witness may be examined, cross-examined and re-examined, orally.

Parties may be present at examinations, &c.

SEC. 52. The supreme court shall prescribe rules for the examination of witnesses, and the taking of testimony, so that an order may be entered by either party, requiring the adverse party to proceed and finish such examination within such time as may be by general rule directed.

Rules to be prescribed for taking testimony.

SEC. 53. The supreme court may, from time to time, make such rules as they may think proper concerning the examination of witnesses before masters or commissioners within this state, and concerning the use of written interrogatories for the examination of witnesses residing out of this state.

Rules concerning examination of witnesses, &c.

SEC. 54. The testimony of all witnesses taken as above perscribed, shall be reduced to writing, and signed by them, and filed with the register of the court where the bill and other pleadings in the cause have been filed.

Testimony to be reduced to writing, and filed.

SEC. 55. Every cause in chancery shall be deemed to be at issue on filing a replication, and it shall not be necessary to issue a subpoena to hear judgment, but all causes shall be brought to a hearing, under such rules as may be from time to time prescribed.

When cause to be deemed at issue, &c.

SEC. 56. If there be an issue of fact which, in the opinion of the court, shall render the intervention of a jury necessary or proper, said court shall, on request of either party, order a jury impaneled

Trial of issue of fact by jury, and verdict thereon.

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Rights of parties
to examination
of witnesses in
open court.

for the trial thereof, and the verdict of such jury may be used upon the hearing of the cause.

SEC. 57. Either party to a cause in chancery shall have the right to an examination of all the witnesses in the case in open court, as in a suit at law, if within ten days after the cause is at issue, he give notice in writing to the opposite party of his intention to claim such right; in which case no commission shall be issued in the cause, nor examination of witnesses had before a master or commissioner, but the cause shall be heard in its course on the calendar, by examination of the witnesses in open court, unless the court, on cause shown, shall otherwise direct.

When bill, pleadings, &c., to be attached together by register.

SEC. 58. After the expiration of thirty days from the time a final decree shall be entered in the minutes of the court, if no appeal therefrom shall have been entered in the minutes of the court, if (*and*) no petition for a re-hearing shall have been presented, upon being required by either party, the register by whom such final decree shall have been entered, shall attach together the bill, pleadings and such other papers filed in the cause, as may from time to time by general rules be directed, together with the taxed bill of costs therein, and shall annex thereto a fair engrossed copy of the decretal order, signed by the circuit judge, and countersigned by the register who entered the same.

Papers to be filed by register.

SEC. 59. The papers so attached, annexed and signed, shall then be filed by the register, and shall remain of record in his office; and such filing shall be deemed an enrollment of the decree and proceedings, for all purposes whatsoever.

Decree affecting real estate may be recorded.

SEC. 60. After the entry and enrollment of any final decree, affecting or determining the title to real estate, a copy of such decree, duly certified by the register in chancery of the county in which the same was entered, under the seal of the court, may be received and recorded in the office of the register of deeds of the proper county, and shall have the same effect as the original decree.

Decree, how discharged.

SEC. 61. Upon producing and filing with the register with whom any decree may have been entered, a written acknowledgment by the party in whose favor such decree was rendered, that he has been fully paid and satisfied the amount of all moneys directed by such decree to be paid, certified by some officer authorized to take the acknowledgment of deeds, to have been duly acknowledged before him by the party signing the same, the register shall enter in the docket of such decree, a note of the satisfaction and discharge thereof, and such decree shall thereupon be discharged, and be of no force or validity.

Ib.

SEC. 62. The court shall have power to order a decree to be discharged upon a hearing of the parties, and upon satisfactory evidence that such decree has been fully paid or satisfied.

How performance of decree may be enforced.

SEC. 63. The court may enforce performance of any decree, or obedience thereto, by execution against the body of the party against whom such decree shall have been made, or by execution against the goods and chattels, and in default thereof, the lands and tenements of such party; but no execution shall be issued on any final decree, until the same shall have been enrolled, as hereinbefore provided.

When suit not to abate by death of one or more of parties.
2 Paige, 213, 360.

SEC. 64. When the cause of action shall survive, no suit in chancery shall abate by the death of one or more of the complainants or defendants; but upon satisfactory suggestion to the court, the suit shall proceed in favor of, or against the surviving parties.

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SEC. 65. When one or more of the complainants or defendants shall die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

When suit to abate as to party dying.
2 Paige, 213.

SEC. 66. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the court may, by order, direct the same to stand revived upon the petition of the complainant.

How suit revived against representatives.
3 Paige, 654.

SEC. 67. A copy of such order shall be served on the representatives against whom the revival is ordered, who shall be allowed sixty days after such service to appear and answer or disclaim.

Copy of order to be served on representatives, &c.

SEC. 68. If they shall not within that time appear and answer or disclaim, the court, upon due proof of the service of such order, may cause their appearance to be entered, and in such case the answer of the deceased party shall be deemed the answer of such representatives.

When court may cause appearance of representatives to be entered.

SEC. 69. If no answer shall have been filed by the deceased party, the court may, in its discretion, order the bill to be taken as confessed against such representatives, or compel them to answer, by attachment or otherwise.

When bill may be taken as confessed, or answer compelled.

SEC. 70. If the deceased party shall have answered, and the complainant deem it necessary to obtain a further answer from his representatives, the petition for revival shall state the matters as to which a further answer is required, and a copy of such petition shall be annexed to a copy of the order to be served on such representatives.

How further answers required from representatives.

SEC. 71. In such case, if the representatives shall not appear and put in such further answer or disclaim, within eighty days, or such further time as the court may allow, after the service of the petition and order, upon due proof of such service, the court may order the petition to be taken as confessed, or compel such further answer by attachment or otherwise.

When petition may be taken as confessed, or further answer compelled.

SEC. 72. When the complainant shall die, and the cause of action shall not survive, his representatives may, on affidavit of such death, and on motion in open court, be made complainants in the suit, and be permitted to amend the bill, if necessary.

When representatives of deceased complainant may be made complainants, &c.
2 Paige, 476.

SEC. 73. The defendant shall be compelled to answer such amended bill, and the cause shall proceed to issue and a hearing, as in ordinary cases.

Defendant compelled to answer amended bill, &c.

SEC. 74. When the representatives shall not cause themselves to be made complainants, within eighty days after the death of the deceased complainant, the surviving complainant may proceed to make them defendants in the suit, as in cases where the representatives of deceased defendants are made parties.

When surviving complainant may make representatives of deceased complainants defendants.
3 Paige, 657.

SEC. 75. If there be no surviving complainant, or he shall neglect or refuse to proceed against the representatives of the deceased complainant as defendants, the court, upon petition of the original defendants, may order such representatives to show cause at a certain day named in such order, why the suit should not stand revived in their names, or the bill be dismissed as far as the interests of such representatives are concerned.

Order to show cause why suit should not stand revived, or bill be dismissed.
4 Paige, 418.

SEC. 76. If no such cause be then shown, the court, upon proof of the reasonable service of a copy of the order upon such representatives, may order the revival of the suit in their names, or the dismissal of the bill with costs or otherwise.

Proceedings if no cause shown.

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When court may order suit to stand revived, on petition of surviving defendant.

How surviving defendant to proceed in such case.

Order requiring creditors, &c., to exhibit demands, how published.

In what cases order for appearance to be made, &c.

Within what time defendants required to appear and answer.

Order for appearance to be published.

SEC. 77. If a defendant shall die, and the cause of action shall not survive, and the complainant shall neglect or refuse to procure an order for the revival of the suit, the court may order it to stand revived, upon the petition of a surviving defendant, against the representatives of the deceased party.

SEC. 78. In such case, the surviving defendant may proceed against such representatives in the same manner as a complainant, to compel them to appear, abide the answer of the deceased party, or answer, if an answer be required, or to have the bill, or his petition taken as confessed against them; and the court may, in its discretion, stay the suit as against him until such proceedings shall have been had.

SEC. 79. Whenever a bill shall be filed in chancery, for relief, or for the benefit of the creditors generally of any person, or of any estate, or for the benefit of any other persons than the complainants, who will come in and contribute to the expense of such suit, every order which may be made thereon requiring such creditors or other persons to exhibit their demands, shall in all cases, be published once in each week, for at least three weeks, and as much longer as the court may direct, in any newspaper which the court may designate.

Of Proceedings against Absent, Concealed, and Non-resident Defendants.

SEC. 80. After the filing of a bill, the court shall make an order for the appearance of a defendant at a future day therein to be specified, as hereinafter directed, in the following cases:

1. When the defendant resides out of this state, upon proof by affidavit of that fact:

2. When the defendant is a resident of the county, upon proof by affidavit that process for his appearance has been duly issued, and that the same could not be served by reason of his absence from, or concealment within the county, or by reason of his continued absence from his place of residence: and,

3. When process for the appearance of two or more defendants has been duly issued, and on proof by affidavit of the service of such process on one or more of the defendants, and that the same cannot be served on the other defendants by reason of their absence from the county.

SEC. 81. The order shall require the defendant to appear and answer the bill, as follows:

1. If he be a resident of the county, within three months from its date:

2. If he be not a resident of the county, but of some other county in this state or of the United States, or one of the territories thereof, or of the province of Canada, within a period not exceeding six months from its date:

3. If he be a resident of any other state or country not before mentioned, within a period not exceeding nine months from its date.

SEC. 82. Such order shall be published within twenty days after it shall have been made, in some newspaper printed in the county, or in such other paper as the court may direct, once in each week for six weeks in succession; but such publication shall not be necessary in any case in which a copy of such order shall have been served on such absent, concealed, or non-resident defendant, personally, at least twenty days before the time prescribed for the appearance of such defendant.

SEC. 83. The court may, if necessary, by further order, extend the time for the appearance of such defendant; and in that case, shall direct the publication of such further order for so long a time as he (*it*) shall think proper.

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Time for appearance may be extended, &c.

SEC. 84. If the defendant shall not appear within the time limited in the order, upon due proof of such publication as shall have been required, or of the personal service of such order as herein provided, the complainant's bill shall be taken as confessed, and the court may, at the request of the complainant, direct a reference to a master to take proof of the facts and circumstances, stated in such bill.

When bill taken as confessed, court may make reference to take proofs.

SEC. 85. The master to whom any such reference may be made, shall take such proofs as may be offered; and the bill shall not be considered evidence before the master of any fact stated therein; but when so directed by the court, the master may receive the testimony of the complainant as evidence.

Master to take proofs, &c.

SEC. 86. Whenever the bill shall have been filed for the payment or satisfaction of any sum of money, the court may, in its discretion, direct that the complainant be examined by the master, as to any payments that may have been made to him, or to any person for his use, on account of the demand mentioned in the bill, and which ought to be credited on such demand, or he may be examined in open court.

Examination of complainant in reference to payments.

SEC. 87. The master shall report the proofs and examinations had before him; and on the coming in of the master's report, or on proof and examination in open court, as the case may be, the court shall make such order thereupon as shall be just.

Master to report proofs, &c., and order thereon.

SEC. 88. Process may then issue to compel the performance of such decree, either by sequestration of the real and personal estate of the defendant, or such part thereof as shall be deemed sufficient; or where any specific estate or effects are demanded by the bill, by causing possession of the property so demanded to be delivered to the complainant.

Performance of decree, how enforced, and when possession to be delivered to complainant.

SEC. 89. Possession in the case last mentioned, shall not be delivered until the complainant shall have given such security, and in such sum as the court shall direct, to abide the order of the court touching the restitution of the estate or effects delivered, in case the defendant shall appear and be admitted to defend the suit.

Security to be given before delivery of possession.

SEC. 90. Upon like security being given, the court, when a sequestration shall have issued, may order the decree to be satisfied out of the estate and effects sequestered; but if such security shall not be given, the estate and effects sequestered shall remain under the direction of the court, to abide its further order.

When decree may be satisfied out of estate sequestered, &c.

SEC. 91. If the defendant against whom such decree shall have been made, or his representatives, shall afterwards appear and petition to be heard, the party so petitioning shall be admitted to answer the complainant's bill, upon paying or securing to be paid, such costs as the court shall adjudge; and the suit shall then proceed in like manner as if such defendant had appeared in due season, and no decree had been made.

When defendant &c., to be admitted to answer bill.

SEC. 92. The defendant or his representatives, must so appear within one year after notice in writing of the decree shall have been given to him or them, and within seven years after the making of the decree, when such notice shall not be given.

Within what time defendant, &c. must appear.

SEC. 93. If the defendant or his representatives shall not so appear within one year after such notice shall have been given, and if not

When decrec to be confirmed.

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In case of bill for
foreclosure, court
may decree sale,
&c.

Proceedings if
defendant ap-
pear before sale.

Sale not to be af-
fected by appear-
ance of defend-
ant, &c.

given, before the expiration of seven years after the making of the decree, the court shall then, by order, confirm the decree against the defendant, and against all persons claiming under him by virtue of any act subsequent to the commencement of the suit, and may make such further order in the premises as shall be just and reasonable.

SEC. 94. If the bill shall have been filed to procure the foreclosure or satisfaction of a mortgage, the court, instead of proceeding to a sequestration in the manner hereinbefore directed, may decree a sale of the mortgaged premises, or of such part thereof as may be necessary to discharge the mortgage, and the costs of suit, as in other cases.

SEC. 95. In the case mentioned in the last preceding section, if the defendant, at any time before the sale of the mortgaged premises, shall appear and pay to the complainant such costs as the court shall award, the court shall stay the sale, and the same proceedings shall be thereafter had, as if the defendant had been served with process, and had regularly appeared.

SEC. 96. No sale and conveyance regularly made under the preceding provisions, upon a bill for the foreclosure and satisfaction of a mortgage, shall be affected or prejudiced by the appearance of the defendant within one year, or the seven years hereinbefore specified, nor by any other proceeding; but such defendant or his representatives, may at any time within seven years after the decree ordering such sale, file a bill against the complainant or his representatives, to account for all moneys received by him or them by virtue of such decree, over and above the amount justly due on the mortgage, and costs of suit; and the court shall proceed on such bill, according to the equity of the case.

Of the granting of Injunctions to stay Proceedings at Law.

Bond to be given
before injunction
to stay trial of
action in a court
of law.

SEC. 97. No injunction shall issue to stay the trial of any personal action in a court of law, until the party applying therefor, shall execute a bond with one or more sufficient sureties, to the plaintiff in such action at law, in such sum as the circuit judge or other officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all moneys which may be recovered by such plaintiff, or his representatives, or the collection of which may be stayed by such injunction, in such action at law, for debt or damages, and for costs therein; and also for the payment of such costs as may be awarded to them in the court in chancery, in the suit in which such injunction shall issue.

When sum of
money to be de-
posited before in-
junction.

SEC. 98. No injunction shall issue to stay proceedings at law in any personal action, after verdict, and before judgment thereon, unless a sum of money equal to the amount for which the verdict was given, shall be first deposited with the court from which the injunction issues, by the party applying for such injunction, or a bond for the payment thereof shall be given as hereinafter directed.

Injunction to
stay proceedings
after judgment
in personal ac-
tion.

SEC. 99. No injunction shall issue to stay proceedings at law in any personal action, after judgment, unless,

1. A sum of money equal to the full amount of such judgment, including costs, shall be first deposited by the party applying for such injunction, or a bond in lieu thereof be given as hereinafter directed: and,

2. Unless such party, in addition to such deposit or bond in lieu thereof, shall also execute a bond with one or more sufficient sureties,

to the plaintiff in such judgment, in such sum as the circuit judge or officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff, or his legal representatives, of all such damages, and costs as may be awarded to them by the court, at the final hearing of the cause.

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SEC. 100. If, after a verdict or judgment at law, any moneys shall be deposited in the court pursuant to either of the two last sections, the same may be paid, on the order of the court, to the plaintiff in such action at law, upon his executing to the people of this state a bond, in a penalty double the amount so deposited, with such sureties as the court shall approve, conditioned that such plaintiff will pay to the register with whom the bill shall be filed, the moneys which he shall so receive, and the interest thereon, or any part thereof, according to any order or decree of the court that may be made in relation to the same.

When moneys deposited may be paid to plaintiff in action at law.

SEC. 101. Whenever the moneys so deposited shall be paid to the plaintiff in the action at law, if the final decision of the cause in chancery shall be against the party obtaining the injunction, the circuit judge may order the bond that shall have been given to be canceled, and shall continue the injunction to stay the proceedings at law, or shall compel the plaintiff therein to cause [such] judgment to be satisfied and discharged of record.

Proceedings when moneys have been paid to plaintiff and decision against party obtaining injunction.

SEC. 102. No injunction shall issue to stay proceedings at law, in any action for the recovery of lands, or of the possession thereof, after verdict, unless the party applying therefor shall execute a bond, with one or more sureties, to the plaintiff in such action at law, in such sum as the circuit judge or officer allowing the injunction shall direct, conditioned for the payment to the plaintiff in such action, and his legal representatives, of all such damages and costs as may be awarded to them, in case of a decision against the party obtaining such injunction.

Injunctions to stay proceedings in actions for recovery of lands, &c.

SEC. 103. The damages to be paid upon the dissolution of such injunction, shall be ascertained by reference to a master, or in such manner as the court shall direct, and shall include not only the reasonable rents and profits of the lands recovered by such verdict, but all waste committed thereon after the granting of the injunction.

Damages on dissolution of injunction, how ascertained, &c.

SEC. 104. The circuit judge shall have power to dispense with any deposit of moneys required by either of the preceding sections, and in lieu thereof to direct the execution of a bond, with sureties, conditioned to pay the amount so required to be deposited, whenever ordered by the court; or if a bond is already required in addition to such deposit, then to direct the enlargement of the penalty and condition of such bond as may be requisite; but whenever such deposit shall be dispensed with, the bond so substituted or enlarged, shall be executed by at least two sufficient sureties.

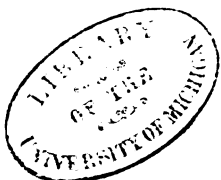
Deposit of moneys may be dispensed with, and bond taken, &c.

SEC. 105. Whenever an injunction shall be applied for, to stay proceedings at law in an action after judgment or verdict, on the ground that such judgment or verdict was obtained by actual fraud, the circuit judge or officer granting the injunction shall have power to dispense with the deposit of any moneys, or the execution of any bond.

When deposit and bond may both be dispensed with.

SEC. 106. The sufficiency of the sureties in any bond executed under the provisions of this chapter, relating to staying proceedings at law by injunction, shall be ascertained, either,

How sufficiency of sureties ascertained.



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1. By the certificate of any master in chancery of the proper county, stating that he has inquired into the circumstances of such sureties, and is satisfied of their sufficiency : or,

2. By the affidavit of such surety, stating that he is a householder, resident within this state, and that he is worth a sum equal to the amount in which the bond shall have been required, over and above all debts and demands against him.

Bond, &c., to be filed with register before delivery of injunction.

SEC. 107. Whenever a bond shall be required to be executed as aforesaid, prior to the issuing of an injunction, the same, with the certificate or affidavit above required, shall be filed with the register, before the sealing and delivery of the injunction.

When circuit judge to direct delivery of bond for prosecution.

SEC. 108. The circuit judge shall direct the delivery of any such bond to the person entitled to the benefit thereof, for prosecution, whenever the condition of such bond shall be broken, or the circumstances of the case shall require such delivery.

Justices of supreme court, &c. to exercise powers of circuit judge with respect to granting injunctions.

SEC. 109. Each justice of the supreme court, and each injunction master within the circuit for which he may be appointed, may severally exercise the powers of the circuit judge, with respect to the granting of injunctions to stay proceedings at law, and for other purposes, in all cases in which the circuit judge may grant injunctions.

Of the Powers and Proceedings of Circuit Courts in Chancery, upon Bills for the foreclosure or satisfaction of Mortgages

Bills of foreclosure, where to be filed, &c.

SEC. 110. All bills for the foreclosure or satisfaction of mortgages shall be filed in the circuit court in chancery where the mortgaged premises are situated ; and in case any defendant is not a resident of the county, an order for his appearance shall be made and proceeded on in the same manner as is provided for in the case of absent or concealed defendant (*defendants*).

Power of the court to decree a sale of mortgaged premises.

SEC. 111. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit : but the circuit judge shall not by such decree, order any lands to be sold within one year after the filing of the bill of foreclosure.

Court may compel delivery of possession, and direct payment of balance.

SEC. 112. When a bill shall be filed for the satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor, of any balance of the mortgaged (*mortgage*) debt that may remain unsatisfied after a sale of the mortgaged premises, in the cases in which such balance is recoverable at law ; and for that purpose may issue the necessary executions as in other cases, against other property of the mortgagor.

No proceedings to be had at law while bill pending, &c.

SEC. 113. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

When court may decree payment of balance against other person than mortgagor.

SEC. 114. If the mortgage debt be secured by the obligation or other evidence of debt of any other person besides the mortgagor, the complainant may make such person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 115. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected or paid.

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Bill to state whether any proceeding had at law, &c.

SEC. 116. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied, in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

When no proceeding to be had, unless execution returned unsatisfied.

SEC. 117. All sales of mortgaged premises, under a decree in chancery, shall be made by a master in chancery, or other person authorized by the court, in the county where the premises or some part of them are situated.

Sales, how made.

SEC. 118. Deeds shall thereupon be executed by such master, which shall vest in the purchaser the same estate that would have vested in the mortgagee if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Deeds to purchasers.

SEC. 119. The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Application of proceeds of sale.

SEC. 120. If such surplus or any part thereof, shall remain in the said court for the term of three months without being applied for, the circuit judge may direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

When surplus may be put out at interest.

SEC. 121. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due with costs.

When bill to be dismissed on payment of amount due and costs.

SEC. 122. If after a decree for sale entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed; but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or instalment of the principal, or of any interest thereafter to grow due.

When proceedings to be stayed on payment of amount due, &c.

SEC. 123. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court may direct a reference to a master, to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony; and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree shall direct so much of the mortgaged pre-

Reference in case of payments to grow due in certain cases.
2 Paige, 302.

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Proceedings in case of default subsequent to decree.

When whole of premises to be sold in the first instance.

In case of sale of whole premises, how proceeds applied.

mises to be sold, as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default.

SEC. 124. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings may be had, as often as a default shall happen.

SEC. 125. If in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall in the first instance be entered for the sale of the whole premises accordingly.

SEC. 126. In such case the proceeds of such sale shall be applied as well to the interest, portion or instalment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable; or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest, for the benefit of the complainant, to be paid to him, as the instalments, or portions of the principal, or the interest, may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

Of Proceedings in relation to the Conveyance of Lands by Infants, and the Sale and disposition of their Estates.

Infant may be compelled to convey lands held by him in trust.
4 John., Ch. r. 378

Conveyance to be effectual.

Infant may apply for sale of lands of which he is seized.
2 Paige, 566.

Court may appoint guardians, &c.

Bond of guardians.

SEC. 127. Whenever any infant shall be seized or possessed of any lands, tenements or hereditaments, by way of mortgage, or in trust only for others, the court of chancery for the county where such property is situated, or in which such infant may be, on the petition of the guardian of such infant, or on the application by bill or petition of any person in any way interested, may order and compel such infant to convey and assure such lands, tenements and hereditaments to any other person, in such manner as the said court shall direct.

SEC. 128. Every conveyance or assurance, made pursuant to such order, shall be as good and effectual in law, as if the same were made by such infant when of lawful age.

SEC. 129. Any infant seized of any real estate, or entitled to any term for years in any lands, may, by his next friend, or by his guardian, apply to the court of chancery for the county where the property is situated, or where such infant may be, for the sale or disposition of such property, in the manner hereinafter directed.

SEC. 130. On such application, the court shall, if necessary, appoint one or more suitable persons, to be guardians of such infant, in relation to the proceedings on such application.

SEC. 131. The guardians shall give bond to such infant, to be filed with the register, in such penalty, with such sureties, and in such

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form as the court shall direct, conditioned for the faithful performance of the trust reposed ; for the paying over, investing and accounting for all moneys that shall be received by such guardian, according to the order of any court having authority to give directions in the premises ; and for the observance of the orders of the court in relation to the said trust.

SEC. 132. If such bond be forfeited, the court shall direct it to be prosecuted for the benefit of the party injured. Prosecution of bond.

SEC. 133. Upon the filing of such bond, the court may proceed in a summary manner, on oral or other testimony, by reference to a master, to inquire into the merits of such application. Reference to inquire into merits of application.

SEC. 134. Whenever it shall appear satisfactorily that a disposition of any part of the real estate of such infant, or of his interest in any term of years, is necessary and proper, either for the support and maintenance of such infant, or for his education ; or that the interest of such infant requires, or will be substantially promoted by, such disposition, on account of any part of his said property being exposed to waste or dilapidation, or on account of its being wholly unproductive, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, the sale, or other disposition of such real estate or interest, to be made by the guardians of such infants, in such manner, and with such restrictions as shall be deemed expedient. When court may order letting or sale, &c., of real estate of infants.

SEC. 135. But no real estate or term for years, shall be sold, leased or disposed of in any manner against the provisions of any last will, or of any conveyance, by which such estate or term was devised or granted to such infant. No real estate, &c., to be sold against provisions of will, &c.

SEC. 136. Upon an agreement for a sale, leasing or other disposition of such property, being made in pursuance of such order, the same shall be reported to the court on the oath of the guardian making the same ; and if it be confirmed, a lease or conveyance shall be executed under the direction of the court. Agreement for sale, &c., to be reported, &c.

SEC. 137. All sales, leases, dispositions and conveyances, made in good faith by the guardian, in pursuance of such orders, when so confirmed, shall be valid and effectual as if made by such infant when of lawful age. Sales, &c., to be effectual.

SEC. 138. From the time of such application to the court, the infant shall be considered as a ward of the court, so far as relates to such property, its proceeds and income ; and the court shall make (*make*) orders for the application and disposition of the proceeds of such property, and for the investment of the surplus belonging to such infant, so as to secure the same for his benefit, and shall direct a return of such investment and disposition to be made on oath, as soon as may be, and shall require accounts to be rendered periodically by any guardian or other person who may be intrusted with the disposition of the income of such proceeds. Orders of court for application of proceeds, accounts by guardians, &c.

SEC. 139. No sale made as aforesaid, of the real estate of any infant, shall give to such infant any other or greater interest or estate in the proceeds of such sale, than he had in the estate so sold ; but the said proceeds shall be deemed real estate of the same nature as the property sold. Interest of infant in proceeds of sale.

SEC. 140. If the real estate of any infant, or any part of it, shall be subject to dower, and the person entitled to such dower shall consent in writing to accept a gross sum in lieu thereof, or the permanent in- Disposition of proceeds in case estate subject to dower.

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vestment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to such dower, during life, the court may direct the payment of such sum in gross, or the investment of such sum as shall be deemed reasonable, and shall be acceptable to the person entitled to such dower, in manner aforesaid; which sums so paid or invested, shall be taken out of the proceeds of the sale of the real estate of such infant.

Release of right of dower to be made before investment.

SEC. 141. Before any such sum shall be paid, or such investment made, the court shall be satisfied that an effectual release of such right of dower has been executed.

Cases in which a Justice of the Supreme Court may exercise the Powers of a Court of Chancery out of his Judicial Circuit.

Proceeding when circuit judge a party, or interested.

SEC. 142. Whenever the circuit judge shall be a party to a suit in a court of chancery in his judicial circuit, or related to any party to such suit, or in any way interested in the event thereof, or whenever he has been solicitor or counsel for either party in any such cause, the bill or petition shall be addressed to some other justice of the supreme court, who shall hold the court of chancery of the proper county for the trial and determination thereof, and shall have and exercise all the powers of the proper circuit judge in relation to such causes; and appeals may be taken therein as in other cases.

Of Appeals to the Supreme Court.

Appeal to supreme court.

SEC. 143. Any complainant or defendant who may think himself aggrieved by the decree or final order of a circuit court in chancery, in any cause, may appeal therefrom to the supreme court.

How appeal perfected.

SEC. 144. Such appeal shall be claimed and entered within forty days from the time of making of such decree or final order, and the appellant shall, within the said forty days, file with the register or clerk who entered such decree or order, a bond to the appellee, with sufficient sureties to be approved by the commissioner or a justice of the supreme court, and in such sum as the commissioner or such justice shall direct, conditioned to pay, satisfy or perform the decree or final order of the supreme court, and to pay all costs, in case the decree or order of the circuit court in chancery shall be affirmed.

On entry of appeal, &c. proceedings stayed.

SEC. 145. Upon the entering of such appeal and the filing of such bond, as directed in the preceding section, all further proceedings in the cause in the circuit court in chancery shall be stayed until otherwise ordered by the supreme court; but if the appeal shall not be entered, and such bond filed within the time above limited therefor, no appeal shall be allowed.

Copy of bill, &c. to be made and transmitted by register.

SEC. 146. When such appeal shall be perfected, it shall be the duty of the register, in thirty days thereafter, to make a copy of the bill, other pleadings, papers and proceedings in the cause, and transmit the same to the clerk of the supreme court residing in the judicial circuit in which such county may be.

Powers of supreme court on appeal.

SEC. 147. Upon any order or decree of the circuit court in chancery being brought by appeal to the supreme court, that court shall examine all errors that may be assigned or found in such order or decree, and shall hear and determine such appeal, and all matters concerning the same, and shall have power to reverse, affirm or alter such order or decree, and to make such other order or decree therein, as shall be just.

SEC. 148. When an appeal shall have been so heard and determin-

ed, all the proceedings, together with the decree or order of the supreme court therein, and all things concerning the same, shall be remitted to the circuit court in chancery for the proper county, where such further proceedings shall be thereupon had, as may be necessary to carry such decree or order into effect.

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Proceedings to be remitted to court of chancery, &c.

SEC. 149. When such appeal from any order or decree of the circuit court in chancery shall be heard before the supreme court, the circuit judge by whom such order or decree was made shall be authorized to sit with the justices of the said supreme court, and inform such court of the reasons for his decree or order, but shall have no voice in the final determination upon such appeal.

Circuit judge may sit with justices, and inform court of reasons for decree or order, &c.

CHAPTER 91.

OF THE PROBATE COURTS.

SECTION 1. Every judge of probate shall hold a probate court in his county, at the times and places established by law, and may adjourn the same from time to time as occasion may require.

Judges of probate to hold courts, and may adjourn the same

SEC. 2. Every probate court shall be a court of record, and have a seal; and each judge of probate shall keep a true and fair record of each order, sentence and decree of the court, and of all wills proved therein, with the probate thereof, of all letters testamentary and of administration, and of all other things proper to be recorded; and, on the legal fees being paid, shall give true copies of the files, records and proceedings of the court, certified by him under the seal of such court.

To be a court of record, and proceedings to be recorded, &c.

SEC. 3. All copies so attested, shall be legal evidence in all the courts of law and equity in this state; and certificates of probate of administration, or of guardianship, attested by the judge of probate may be given in evidence, and have the same effect as any probate, letter of administration, or letter testamentary or of guardianship, made out in due form of law.

Effect of attested copies, as evidence. 1842, p. 107.

SEC. 4. The probate court shall be deemed open at all times for the transaction of any ordinary business which may be necessary therein, when previous notice is not required to be given to the person interested.

Court always open for certain purposes.

SEC. 5. The judge of probate for each county shall have power to take the probate of wills, and to grant administration of the estate of all persons deceased, who were at the time of their decease, inhabitants of, or residents in the same county, and of all who shall die without the state, leaving any estate within such county to be administered; and to appoint guardians to minors and others in the cases prescribed by law, and shall have and exercise all such other powers and jurisdiction as are or may be conferred by law.

Powers and jurisdiction of judges or probate.

SEC. 6. The judge of probate shall have jurisdiction of all matters relating to the settlement of the estates of such deceased persons, and of such minors and others under guardianship.

SEC. 7. The judge of probate shall have power to administer all oaths necessary in the transaction of business before the probate court, and all oaths required by law to be administered to persons executing trusts under the appointment of such court.

Power of judge in administering oaths.

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Process.

Sec. 8. The several judges of probate shall have power to issue all warrants and processes in conformity to the rules of law, which may be necessary to compel the attendance of witnesses residing in any part of this state, or to carry into effect any order, sentence or decree of the probate courts, or the powers granted them by law.

Orders, &c., how enforced.

Sec. 9. If any person shall refuse or neglect to perform any order, sentence or decree of a probate court, such court may issue a warrant, directed to any sheriff, constable or other proper officer in this state, requiring him to apprehend and imprison such person in the common jail of the county, until he shall perform such order, sentence or decree, or be delivered by due course of law.

Who shall serve process.

Sec. 10. All sheriffs, deputy sheriffs, coroners and constables shall serve and execute all legal warrants and processes to them directed by any judge of probate.

Commissioners to take testimony.

Sec. 11. When a witness whose testimony is necessary to be used before any court of probate, shall reside out of this state, or by reason of age or bodily infirmity, shall be unable to attend in person, the court may issue a commission to one or more competent persons to take the testimony of such witness; and depositions taken according to the provisions of law, for taking depositions to be used on the trial of civil causes, may be used on the trial of any question before the probate court, where such testimony may be proper.

Contempts, how punished.

Sec. 12. The judge of probate shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt may be punished in the circuit court.

When jurisdiction not to be contested.

Sec. 13. The jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of any person, or the location of his estate, shall not be contested in any suit or proceeding whatever, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

When court first taking cognizance to retain jurisdiction.

Sec. 14. When a case shall be originally within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout.

Presumption in favor of orders, &c., after twenty years.

Sec. 15. When the validity of any order or decree of a probate court shall be drawn in question in any other suit or proceeding, everything necessary to have been done or proved to render the order or decree valid, and which might have been proved by parol at the time of making the order or decree, and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

When circuit court commissioners to hold court.

Sec. 16. If a judge of probate shall remove out of his county, or shall die, resign, or otherwise become incapacitated for executing the duties of his office, the circuit court commissioner for such county shall hold the court, have all the powers, and perform all the duties of judge of probate therein, until such incapacity shall be removed, or until another judge shall be elected and qualified.

Ib.

Sec. 17. When a judge of probate, his wife or child, shall be an heir or legatee, or when such judge shall be an executor or administrator of a deceased person, he shall be deemed incapacitated for executing the duties of his office in relation to that estate; and the circuit court commissioner for the same county shall perform such duties.

Ib.

Sec. 18. When the judge, as creditor, or otherwise, shall be interested in any question to be decided by the court, he shall be deemed

to be incapacitated for acting in the decision of that question, and the circuit court commissioners for the same county, in such case, shall perform the duties of judge of probate.

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SEC. 19. No judge of probate shall be retained or employed as solicitor, attorney or counsel in any suit or matter which may depend on, or in any way relate to, any sentence or decree made or passed by him; nor shall he be solicitor, attorney or counsel, for [or] against any executor, administrator or guardian appointed within his jurisdiction, in any suit brought by or against the executor, administrator or guardian, as such, nor in any suit relating to the official conduct or duty of such party.

When judge of probate not to be employed as attorney, &c.

SEC. 20. No clerk or other person employed in the office of any probate court, shall be commissioner, appraiser, or divider of any estate, in any case that is within the jurisdiction of such court.

Clerk, &c., in probate office not to be appraiser, &c., in certain cases.

SEC. 21. When any executor, administrator, guardian or trustee, who is required to make oath to any account, is unable, by reason of sickness or otherwise, to attend personally in the probate court for that purpose, the judge may either proceed himself to administer the oath to the accountant, out of court, or may by his order, authorize any justice of the peace or notary public to administer it; and a certificate of the oath with the account, and the vouchers therewith, and the order, if any, shall be returned into the office of the judge of probate, and be there filed and recorded.

When oath may be administered by judge out of court, or by a justice of the peace, &c.

SEC. 22. All other oaths required to be taken, by executors, administrators, guardians and trustees, commissioners, appraisers and dividers of estates, or by any other persons, in relation to any proceeding in the probate court, may be administered either by the judge of probate, or by any justice of the peace, or notary public, and a certificate thereof, when taken out of the court, shall be returned into the probate court, and there be filed and recorded.

Other oaths may be taken by judge or justice, &c.

SEC. 23. Any warrant or commission, for the appraisement of any estate, for examining claims against estates, for partition of real estate, or for the assignment of dower, may be revoked by the judge of probate for sufficient cause, and the judge may thereupon issue a new commission, or proceed otherwise therein, as the circumstances of the case shall require.

Certain warrants &c., may be revoked.

SEC. 24. No bond required by law to be given to the judge of probate, to be filed in his office, shall be deemed sufficient, unless it shall have been examined and approved by the judge, and his approval thereof endorsed thereon in writing, and signed by him.

Bonds when not deemed sufficient unless approved by judge, &c.

SEC. 25. In all cases not otherwise provided for, any person aggrieved by any order, sentence, decree or denial of a judge of probate, may appeal therefrom to the circuit court for the same county, by filing a notice thereof with the judge of probate within sixty days from the date of the act appealed from, with his reasons for such appeal, together with such bond as is required in the next section.

Appeals.

SEC. 26. The party appealing shall, at the time of filing notice thereof, file with the judge of probate a bond to the adverse party, in such penalty, with such surety or sureties as the judge of probate shall approve, conditioned for the diligent prosecution of such appeal, and the payment of all such damages and costs as shall be awarded against him, in case he shall fail to obtain a reversal of the decision so appealed from.

Bond on appeal 1842, p. 107.

SEC. 27. The appellant shall give notice of such appeal to the ad-

Notice of appeal to adverse party.

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Appellant to procure certified copy of record.

verse party, with his reasons therefor, in such manner as the probate court shall direct, at least fourteen days before the same shall be entered in the circuit court.

On filing copy of record, circuit court to try question.

SEC. 28. The person appealing shall procure and file in the circuit court to which the appeal is taken, a certified copy of the record or proceedings appealed from, of the notice of such appeal filed in the probate court, and the reasons for such appeal, together with evidence of the filing of the requisite bond, and that notice has been given to the adverse party according to the order of the probate court.

SEC. 29. When such certified copy shall have been filed in the circuit court, with the evidence of filing the requisite bond, and of giving notice as aforesaid, such court shall proceed to the trial and determination of the question according to the rules of law; and if there shall be any [question] of fact to be decided, issue may be joined thereon under the direction of the court, and a trial thereof had by jury.

When circuit court may allow appeal.

SEC. 30. If any person aggrieved by any act of the judge of probate, shall, from any cause, without default on his part, have omitted to claim or prosecute his appeal according to law, the circuit court, if it shall appear that justice requires a revision of the case, may on the partition (*petition*) of the party aggrieved, and upon such terms as it shall deem reasonable, allow an appeal to be taken and prosecuted with the same effect as if it had been done seasonably.

Notice of application to circuit court for allowance of appeal.

SEC. 31. No such appeal shall be allowed, without due notice to the party adversely interested, nor unless the petition therefor shall be filed within one year after the making of the decree or order complained of, except as provided in the following section.

Time for filing petition, when petitioner was without U. S., at the passing of the decree.

SEC. 32. If the petitioner shall be without the United States at the time of passing the decree or order, he may file his petition within three months after his return, provided it be done within two years after the act complained of.

Petition may be filed with clerk in vacation.

SEC. 33. The petition may, in all cases, be filed in the clerk's office in vacation, as well as in term time, and the clerk shall note upon it the time when it is filed.

Proceedings stayed by appeal.

SEC. 34. After an appeal is claimed, and notice thereof given at the probate office, all further proceedings in pursuance of the sentence, order, decree or denial appealed from, shall cease until the appeal shall be determined.

Powers of circuit court on appeal.

SEC. 35. The circuit court may reverse or affirm, in whole or in part, the sentence or act appealed from, and may make such order or decree thereon as the judge of probate ought to have made, and may remit the case to the probate court for further proceedings, or may take any other order therein, as law and justice shall require.

When circuit court to affirm decree, &c.

SEC. 36. If the appellant shall fail to prosecute his appeal with reasonable diligence, the circuit court, upon evidence that such appeal was taken, and on the motion of any person interested in the case shall affirm the decree or act appealed from, and may allow costs against the appellant.

Costs in contested cases.

SEC. 37. In all cases that shall be contested, either in the probate court or in the circuit court, such court may award costs to either party, in its discretion, to be paid by the other, or to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

Execution for costs.

SEC. 38. When costs are awarded to one party, to be paid by the

other, the said courts, respectively, may issue execution therefor, in like manner as is practiced in the circuit courts in other cases.

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SEC. 39. Each county shall provide all books necessary for keeping the records, in the office of the judge of probate; but all printed blanks, and other stationery, and all the incidental expenses of the office, shall be furnished and paid by the judge of probate.

Books to be furnished by county—blanks, &c., by judge.

SEC. 40. There shall be a probate court held in each county on the first Monday of each month, and on such other days as the judge of probate shall appoint; and in case any matter shall not be heard at the time appointed for hearing the same, such matter shall stand continued until the next stated term of the court, unless the parties interested otherwise agree.

Probate courts, when to be held. 1845, p. 66.

SEC. 41. The supreme court of this state shall have power, from time to time, to make uniform rules for regulating the proceedings in all the probate courts of the state, and to alter, amend or modify the same as it may judge necessary, in all cases not expressly provided for by law.

Supreme court to make rules.

SEC. 42. The seals of the several probate courts now used by them respectively, shall continue to be the seals of such courts, until others shall be provided according to law.

Seals of courts now in use. 1843, p. 107.

SEC. 43. In case the probate court of any county shall have no proper seal, the judge shall, at the expense of his county, cause a seal to be made for his office, with such device as he shall think proper, and with the words "Probate Seal," and the name of the county inscribed thereon, and shall deliver a description thereof to the secretary of state to be deposited and recorded in his office.

New seals, how procured, &c. 1832, p. 107.

SEC. 44. When notice of any proceedings in a probate court shall be required by law, or be deemed necessary by the judge of probate, and the manner of giving the same shall not be directed by any statute, the judge of probate shall order notice of such proceedings to be given to all persons interested therein in such manner, and for such length of time as he shall deem reasonable.

Notice of proceedings in certain cases. 1845, p. 66.

SEC. 45. Each judge of probate shall make an alphabetical index to the records of proceedings in the probate court, and keep the same in his office.

Index of records in probate office. 1845, p. 66.

CHAPTER 92.

OF THE COUNTY COURTS.

SECTION 1. There shall be established in each of the organized counties of this state, a county court for such county, which shall be held at the county seat thereof, for the transaction of all business that may be lawfully brought before it. The qualified electors of each county shall, on the first Tuesday of November, eighteen hundred and forty-six, and once in every four years thereafter, elect a suitable person to the office of judge of said county, who shall be called the county judge, and hold his office for four years from the first day of January thereafter, and until his successor is elected and qualified to serve in his place.

County courts,—judge of, when to be elected, term of office.

SEC. 2. There shall be elected at the same time, and in the same

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Second judge.

manner, an additional judge in each county, to be called the second judge, who shall hold his office for the term of four years, whose duty it shall be to perform the duties of the county judge, when such judge is interested, or when from absence, or other disability, is unable to serve; provided, that when the office of county judge becomes vacant from any cause, such vacancy shall be filled at the first general election thereafter.

County court to be a court of record—its powers and jurisdiction.

SEC. 3. The county court shall be a court of record, with a clerk and seal, and shall have original and exclusive jurisdiction of all civil actions arising or brought within the county, where the debt or damages demanded do not exceed the sum of five hundred dollars, (excepting actions of ejectment, proceedings in probate cases, and cases cognizable by justices of the peace,) and appellate jurisdiction of all cases of appeal from courts of justices of the peace in civil proceedings: such court shall also have jurisdiction of proceedings for the foreclosure of mortgages as hereinafter prescribed, and full power and authority to enter judgments by confession; and by the consent of parties to try any civil action, except actions of ejectment, without limitation as to amount.

Power to issue process, &c.

SEC. 4. The county courts shall have full power and authority to issue all legal process, proper and necessary to carry into effect the jurisdiction given them by law, and to carry out such jurisdiction, shall have and exercise all the powers usually possessed by courts of record under the common law, under the limitations and regulations imposed by statute.

When and where to be held.

SEC. 5. The county court shall be held in each of the counties of this state, on the first Monday of every month, and on such other days as the judge thereof may find necessary or convenient for the transaction of business; but no notice of the holding of such court shall be necessary in any case except such as is given by the process of the court, or the continuance of a cause.

County judge to take and file oath of office.

SEC. 6. Each judge of a county court, before he enters upon the duties of his office, shall take and subscribe the oath prescribed by the constitution of this state, which may be administered by the county clerk, or any justice of the peace of the county, and shall be filed in the office of the county clerk.

Clerk of county, his powers and duties.

SEC. 7. The county clerk shall be the clerk of the county court, and shall have the custody and care of all the books and papers belonging to the court, shall be present at all trials, if required by the judge, may swear all the witnesses and jurors on the trial of a cause, shall keep minutes of the proceedings and judgments of the court, under the direction of the judge, shall issue all process under his hand and the seal of the court, except where otherwise provided for by law, and shall tax all costs from minutes thereof kept by him (including witnesses' fees) under the direction of the judge; provided, that in case of his inability to discharge his duties, by reason of sickness or absence, his deputy may perform the same, or the court employ some person in his place.

Process, how to be directed and by whom served.

SEC. 8. All process from county courts shall be directed to the sheriff of the proper county, and may be served by such sheriff, or by any of his deputies, or by any person specially deputed therefor by the court.

Security for costs.

SEC. 9. The county judge may, in all actions, either before or after the issuing of process, at his discretion, require of the plaintiff satis-

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factory security for costs, and the person giving such security shall sign a memorandum thereof in writing to that effect, which shall be filed with the clerk, and in all cases, plaintiffs not residing in the county shall give such security before process shall issue.

SEC. 10. Amicable suits may be entered by the parties thereto, without process, and thereupon the same pleading shall be made, and the same proceedings had as in other cases.

Amicable suits.

SEC. 11. All causes not commenced by an amicable appearance of the parties thereto, or by warrant, attachment or writ of replevin, shall be commenced by declaration made orally, or in writing, by the plaintiff in person, or by agent or attorney, on oath before the court or clerk thereof; which said declaration shall be a brief statement of the form of the action, and of the plaintiff's claim or demand, and in all actions arising upon contract, may be made without regard to any form of declaration heretofore used, but such declaration shall in all cases set forth specifically the nature of the plaintiff's claim or demand; and if for money due upon contract, the amount due after allowing all credits to which the defendant is entitled shall be the damages claimed therein; and the plaintiff in every action for the recovery of a debt or damages, shall, at the time of filing such declaration, state to the court or clerk, the amount for which he will take a judgment, which offer shall not prejudice such party on the trial.

What suits to be commenced by declaration—what declaration to contain. Offer by plaintiff.

SEC. 12. The court or clerk before whom the declaration is so made, shall file the same in his office, and make a note of the substance thereof in the docket or record of the court, and shall number and entitle the cause; he shall also note therein the amount for which the plaintiff offers to take a judgment, and such filing shall be the commencement of the suit for all purposes whatever.

Filing declaration, and entering cause.

SEC. 13. The plaintiff may unite in one suit as many different causes of action arising upon contract as he may have against the defendant; and if he shall commence a suit against any defendant on a cause of action or matter, which by law he might have united with causes previously determined between them, he shall not recover costs in such suit; and assignees of bonds or other choses in action may sue the same in their own names, but the same shall be subject to all equities according to the rules of law and evidence.

Joinder of different causes of action. Costs in case of omission. Assignees of choses in action may maintain suits.

SEC. 14. In all actions founded in whole or in part, on any paper, writing, book of account or record, the party making the same shall, with his declaration, present such paper, writing, account or record, or a copy thereof, if in his possession, or under his control, and if otherwise he shall so state it, that the court may lend its aid in procuring the same.

Documents on which action is founded, to be presented with declaration.

SEC. 15. On making and filing declaration as commencement of suit, if the defendant be not present and appear therein, the court shall (except in cases where the plaintiff is entitled to other process,) issue a summons commanding the officer having the same, to summon the defendant to appear before the court at a time therein mentioned, not less than ten nor more than thirty days from the date thereof, to answer the plaintiff in the action; which summons shall contain a brief statement of the nature of the plaintiff's claim or demand as set forth in the declaration, and the amount claimed, with an endorsement thereon of the sum for which judgment is offered to be taken by the plaintiff.

When summons to issue on filing declaration—what to contain.

SEC. 16. On the return of such summons, personally served, if the

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Proceedings if
defendant fails
to appear after
personal service.

How defence to
be made.

Set-off.

Dilatory pleas,
and proceedings
thereon.

Renewal of offer
by plaintiff, and
offer by defend-
ant.

Continuances.

defendant do not appear, in person or by attorney, within one hour after the time mentioned therein for his appearance, the court shall, at the request of the plaintiff, proceed with the cause *ex parte*; but no judgment shall in such case be rendered against the defendant for an amount greater than the sum for which the plaintiff offered to take judgment.

SEC. 17. If the defendant be within the county, and has a defence to make to such suit, he shall, unless good cause be shown for his non-appearance, appear in person on the return day of the summons, at the time and place stated therein, and being first sworn that he will state his defence truly, and true answers make to all such questions as may be put to him touching the same, he shall state orally, or in writing, the nature and ground of his defence, and if the same be founded in whole or in part upon any paper, writing, book of account or record, he shall exhibit the same with his answer or plea, or a copy thereof, if in his possession or under his control; if not, he shall so state, that the court may aid in procuring the same, and all of which shall in substance be noted in the record of the case; provided, however, that a defendant may appear by attorney and file his affidavit made before any officer authorized to administer oaths, setting forth specifically the nature and ground of his defence and the matters aforesaid.

SEC. 18. A defendant may, in his defence on any suit brought against him for the recovery of any debt or damages, arising upon contract, set forth in his answer, all causes of action he may have against such plaintiff, which by law could be united were he plaintiff, and if he shall prove an amount exceeding the amount proved against him by the plaintiff, he shall have judgment for such excess, with costs against plaintiff; nor shall such defendant recover costs in any subsequent action upon any such demand which might have been set off.

SEC. 19. In all cases where the defendant interposes any objection to the plaintiff's action which goes to the jurisdiction of the court, or in abatement of such suit; or in the nature of a demurrer or dilatory plea, or in avoidance of such action; such objection need not be made under oath, and shall be immediately heard and investigated before the court; and if the objection be of such nature that it may be removed by an amendment of process or pleadings, such amendment shall be allowed and ordered by the court without delay, and without costs; and so in like manner as to any objections which the plaintiff may make to the defendant's answer. And no continuance shall be allowed unless by consent of parties, or on good cause shown, until the issue be joined upon the merits of the cause.

SEC. 20. In a case where the plaintiff seeks to recover any debt or damages, after the issue is joined, he may renew the offer made to the defendant as to the amount for which he will take a judgment, or he may increase or diminish such amount at his election; and the defendant shall, after issue joined, state the amount, if any thing, for which he will confess a judgment, without trial, and such offer shall be noted by the court.

SEC. 21. In all cases if the plaintiff or defendant shall make it appear to the satisfaction of the court, by his own oath or other legal testimony, that he cannot safely proceed to trial for the want of some material testimony or witness, naming such witness, the court shall order a continuance of the cause for such reasonable time, so often as

he shall deem it necessary, not exceeding in all three months ; provided, that a party claiming a second or subsequent continuance, shall further make it appear to the satisfaction of the court, that he has used reasonable diligence to procure such testimony or witness since the last continuance.

SEC. 22. If it shall appear by the declaration, plea, answer or examination of either party to a suit, that a paper, writing, or book of account is in the possession or under the control of the opposite party, and that the same is material and necessary to be used in making the issue, or as evidence on the trial, or both, the court shall order the party having the same in his possession, or under his control, to deliver such paper, writing or book, to the court, to be used for such purpose, and upon his neglect or refusal to comply with such order, or show reasonable cause therefor, he shall, on proof of the service of a copy of such order, be deemed to admit that the contents of such paper or book are such as are stated under oath by the party seeking their production.

Compelling the
delivery of pa-
pers by parties.

SEC. 23. If it shall appear as stated in the last preceding section, that a paper, writing, or book of account is in the possession, or under the control of some person, not a party to a suit, and that the same is necessary to perfect the issue in such suit, or to be used as evidence on the trial, the court shall issue a subpoena duces tecum, for such person and paper, or book, returnable in the discretion of the court, and if such person, on being personally served with such subpoena, shall refuse to appear, or on appearing shall refuse to testify or to answer such questions under oath as may be put to him, or if such person shall admit the possession of such paper or book, and shall neglect or refuse to deliver the same to the court, to be used as required, and no reasonable excuse can be shown therefor, such neglect or refusal shall be deemed a contempt of court, and the person guilty thereof may be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or both in the discretion of the court ; and the contents of such writing or book may be proved by other testimony.

Compelling the
delivery of pa-
pers by persons
not parties.

SEC. 24. If an issue of law be made in the cause, it shall be tried by the court ; if an issue of fact, it shall, on demand of either party as hereinafter provided, be tried by a jury, to consist of not less than six, nor more than twelve, at the option of the party demanding the same, and if no jury be demanded by either party, the issue shall be tried by the court.

Issues how to be
tried, number of
jurors.

SEC. 25. The demand for a jury shall be made after issue is joined, and if the cause be adjourned, before the adjournment, and must be accompanied, by the payment into court of the legal fees for the jury demanded ; (such fees to be taxed against the party losing ;) on such demand the court shall direct an officer or disinterested person present, to write down the names of three times the number of persons required for the jury, who are qualified to serve as jurors in the circuit court, and not of kin to either party, nor in any manner interested in the cause ; such officer or other person being by the court first sworn to select such names without partiality to either party ; the list being made, the parties shall each alternately strike out a name until the requisite number be left, and if either party shall refuse or neglect to strike out on his part, the court or clerk may strike out the names in his stead ; a venire shall thereupon be issued by the court for the per-

When demand
for jury to be
made, and pro-
ceedings thereon

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Substance of issue to be stated to jury.

Hearing by jury, and rendering verdict.

Recovery of costs.

Staying of execution on judgment.

Executions.

Proceedings against sheriff, for neglect to serve or return execution, or to pay over moneys collected.

sons thus selected, and delivered to an officer, who shall forthwith proceed to summon the jury therein named. If any of the jurors named in such venire, shall not be found, or shall fail to appear according to the summons, or if there shall be any legal objections to any who shall appear, the court shall direct the officer to summon a sufficient number of talesmen to supply the deficiency; but in all cases the parties may agree upon any number of persons to try the cause.

SEC. 26. When a cause is ready for trial, the court, before proceeding with the testimony, shall state, or cause to be stated to the jury, if there be one, the substance of the issue or issues made in the case.

SEC. 27. When a jury shall have been regularly impaneled and sworn, they shall sit together and hear the testimony and charge of the court, and after deliberation render their verdict according to law, and evidence given them in open court.

SEC. 28. If on a trial, a judgment be rendered in favor of the plaintiff, equal to the sum for which he shall have offered to take judgment, or for more than was offered by the defendant, or for any sum when the defendant refused to make offer on his part, he shall recover his taxable costs: if he shall recover any sum less than the offer of the defendant, he shall not recover any costs, but the defendant shall be entitled to the costs of trial, to be deducted from the judgment. If he shall fail to recover any sum, or if the defendant shall obtain a judgment against the plaintiff, such defendant shall be entitled to all his costs.

SEC. 29. The party against whom any judgment may be rendered in the county court, whether on confession or on trial, may at any time within ten days from the date of such judgment, stay the execution thereon by filing with the clerk of the court, security in writing with one or more sureties, satisfactory to the court for the payment of the judgment, interest and costs, within one year from the commencement of the suit, and if the amount of such judgment and costs be not paid within the time limited by law for such stay, execution may issue as well against the surety in such stay, as against the party to such judgment; provided, that this section shall not be so construed as to authorize the entry of bail to stay the operation or issuing of any order or decree of said court, other than an execution on a judgment for the payment of money.

SEC. 30. Executions from the county courts shall be directed to the sheriff of the county, (except in cases where by law a coroner or constable is required to serve the same), be dated on the day on which they actually issue, be made returnable in ninety days thereafter, and shall run against the goods and chattels, lands and tenements of the defendant within the county.

SEC. 31. If the sheriff or any officer to whom any execution from a county court shall have been delivered, shall neglect to return the same within five days after the return day thereof, or shall refuse or neglect to serve any such execution, or to levy the same, as lawfully directed, or shall refuse or neglect to pay over any moneys collected by him on any such execution, as required by law, the county court, upon application of the judgment creditor upon oath, setting forth such neglect or refusal, specifically, shall issue a citation returnable not less than six nor more than fifteen days from the date thereof, which shall be served by any constable of the county five days at least before the return day thereof, citing such sheriff or other officer

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to appear before said court at a time named therein, to show cause, if any there be, why he should not be held liable to pay the amount due to the judgment creditor on such execution, including damages, interest and costs; and if on such hearing no sufficient cause be shown by such officer why he should not be held liable as aforesaid, the court shall render judgment in favor of the judgment creditor and against such officer, for the amount due him upon such execution, damages, interest and costs inclusive, together with the costs of the proceeding and ten per cent damages on the amount due as aforesaid, and no bail for the stay of execution in any such judgment shall be allowed to be put in, in any such case, but execution may issue thereon immediately, directed to any constable of the county, who may collect the same, with all the powers and liable to all the penalties of a sheriff in similar cases.

SEC. 32. Any creditor may proceed by attachment in the county court against the property of his debtor, in the cases, upon the conditions, and in the manner provided in title twenty-four, for proceedings against debtors in attachment in the circuit court, subject only to the limitation of the jurisdiction of the said county court; and such attachments in county courts shall be issued and proceeded in, in all respects in conformity with the provisions regulating proceedings against debtors in attachment in the circuit court, so far as the same can be made to apply, and are consistent with the practice of said county courts as herein established; and every such writ of attachment shall be made returnable in fifteen days from the date thereof.

When and how
creditor may
proceed by at-
tachment.

SEC. 33. The jurisdiction of county courts in actions of replevin, shall extend to all cases where the value of the property replevied does not exceed the sum of five hundred dollars, as assessed by the appraisers, such actions shall be commenced and proceeded in [in] said county courts, in the same manner in all respects, as is provided for actions of replevin in the circuit court, in title twenty-four, so far as the provisions thereof can be made to apply, and are consistent with the practice of said county courts as herein established; but no exceptions shall be taken in the county court to the sufficiency of the sureties taken by the sheriff or his deputy, in any such action, but the officer taking the same shall be liable for the sufficiency thereof; nor shall it be necessary that the issue in any action of replevin in the county court shall be tried by a jury, unless one of the parties thereto demand the same, as hereinbefore provided; and every such writ of replevin shall be made returnable not less than ten days nor more than thirty days from the date thereof.

Jurisdiction and
proceedings of
court in actions
of replevin.

SEC. 34. On default being made in the payment of any money secured to be paid by a mortgage of real estate, accompanied by a note, bond or other obligation of the mortgagor, or containing a covenant or express agreement for the payment of the money secured thereby, such mortgage may, in all cases where the sum due and secured with interest thereon does not exceed the sum of one thousand dollars, be foreclosed and collected in the county court for the county in which the mortgaged premises are situated, in the manner hereinafter provided.

What mortgages
may be foreclosed
in county
courts.

SEC. 35. The mortgagee, his heirs or assigns, on any payment of principal or interest becoming due on such mortgage, may make and file a declaration as commencement of suit, in the county court as in other cases of a demand for money, and prosecute such suit to final

Suit and judg-
ment against
mortgagor.

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Stay of execution on judgment for amount due on mortgage—order for sale of mortgaged premises, and proceedings thereon.

Proceedings on judgment if no stay put in, and redemption of mortgaged premises in such case.

Order for sale after execution returned unsatisfied, and proceedings thereon.

When warrant may issue on filing declaration.

judgment as in other cases, or take judgment by confession, for such amount as may be found due on such mortgage and its accompanying obligations, and when such judgment is entered, the judge or clerk of the county shall endorse on the back of such mortgage the amount and date of such judgment, which endorsement shall have no other or further effect than to exhibit the proceedings in such case.

SEC. 36. The party against whom judgment may be rendered as provided in the last preceding section, may enter bail therein for the stay of execution as in other cases, and if, at the end of the time for which such execution be stayed, the amount of such judgment, with interest and costs, or any part thereof remains unpaid, the plaintiff in such judgment, his heirs, assigns or legal representatives, may, at his or their election, take out an execution thereon against the defendant and against his bail, or may have an order of court for the sale of the real estate described in such mortgage, or of so much thereof as may be necessary to satisfy said judgment, interest, costs and expenses of sale. The sale of such premises shall be made by the sheriff, under and by virtue of such order; and be advertised, proceeded in and made in all respects in conformity with the law for the sale of real estate on execution; and such sale shall have the same effect as the sale of mortgaged premises on foreclosures of mortgages by advertisement, pursuant to the statutes in such case made and provided, except that the time for redemption of the mortgaged premises shall be sixty days and no longer.

SEC. 37. If a mortgagor against whom judgment is rendered as provided for in the preceding sections, does not enter bail for the stay of execution, the plaintiff may in like manner, at his election, take out an execution against such defendant, or he may have an order for the sale of the mortgaged premises as above provided, or of so much thereof as may be necessary to satisfy such judgment, with the interest and costs: on a sale of mortgaged premises, when no bail has been put in for the stay of execution, the mortgagor or party in interest in such premises, shall have the same length of time to redeem the mortgaged premises that is allowed by law in case of sales under foreclosure by advertisement.

SEC. 38. If, in any case, a party plaintiff, in a judgment founded on a mortgage, shall elect to take execution against the defendant, or against the defendant and his bail, and such execution shall be returned by the officer to whom the same shall have been delivered, unsatisfied in whole or in part, such plaintiff shall be entitled, on application to a judge of the court, to an order of sale of so much of the mortgaged premises as may be necessary to satisfy the amount so due and unpaid, and such order shall be proceeded on in the same manner, and with the like effect, as when the plaintiff elects to take an order of sale, as above provided.

SEC. 39. If at the time of making and filing declaration as commencement of suit in the county court as hereinbefore provided, the plaintiff or some one in his or her behalf, shall make and file with the court an affidavit, stating facts and circumstances, and showing to the satisfaction of the court,

1. That the defendant fraudulently contracted the debt, or incurred the obligation, respecting which suit is brought: or,

2. That the plaintiff's demand is for the recovery of money collected by a public officer: or,

3. That the plaintiff's demand is for the recovery of damages for misconduct or neglect in any professional employment, or by an officer : or,

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4. That the plaintiff's demand is for the recovery of damages for a breach of promise to marry : or,

5. That the defendant has committed a trespass or other wrong, to the damage of the plaintiff : or,

6. That the defendant has incurred a penalty by some law of this state, for which the plaintiff has a right to sue : the plaintiff shall be entitled to a warrant against the defendant, instead of a summons as hereinbefore provided for.

SEC. 40. Such warrant shall command the officer serving the same, to take the body of the defendant and bring him forthwith before the court, to answer the plaintiff, in the action mentioned therein, and shall require such officer, after he shall have arrested the defendant, to notify the plaintiff of the arrest.

Contents of warrant.

SEC. 41. When the defendant shall be brought into court on any such warrant, the court shall forthwith, or within three days thereafter, unless the parties agree to a longer time, proceed to hear, try and determine the cause, unless such cause be continued, or cause shown, as in other cases ; if such continuance be made on the application of the plaintiff, or by consent of the parties, the defendant shall be discharged from custody, but the cause shall not be discontinued thereby, but shall be proceeded in at the day to which the same was continued as in other cases ; if such continuance be had on application of the defendant he shall give bond to the plaintiff satisfactory to the court, conditioned to appear on the day to which the same was continued, and pay any judgment that may be recovered against him in the cause, or render himself in execution on any such judgment ; and in default of giving such bond, he shall continue during the time of continuance, in the custody of the officer serving the warrant.

Proceedings on return of warrant.

SEC. 42. All the general provisions of these revised statutes relating to the powers and duties of courts of record, shall apply to the county courts hereby established, so far as the same are not inconsistent with any provisions respecting the said courts and the proceedings and practice therein in this chapter contained, and no further.

Provisions relating to courts of record, how far applicable to county courts.

SEC. 43. Each county shall provide all books necessary for keeping the records of its county court, but all incidental expenses for stationery and blanks shall be paid by the county judge.

How books, &c., for court to be provided.

SEC. 44. The county judge of each county shall, at the expense of the county, cause to be made for the use of his court, a seal with a suitable device, and with the words "(here insert the name of the county) county court" engraved thereon, and shall deliver a description thereof to the secretary of state to be kept and recorded in his office, and until such seal can be procured, the private seal of said judge shall be deemed the seal of the court when used therefor.

Seals of county courts.

SEC. 45. No appeal shall be made or allowed of any case, tried or determined by a county court, but in all cases of judgments rendered in such courts, either party thinking himself aggrieved or injured by such judgment may remove the same by certiorari into the circuit court for the same county in which such judgment was rendered.

Removal of cause to circuit court by certiorari.

SEC. 46. The party intending to apply for such certiorari, shall give to the judge of the county court, rendering the judgment, within five days after the rendition of the same, a notice in writing of the

Notice of removal of cause, and affidavit for obtaining certiorari

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Affidavit to be presented to judge or commissioner—when writ to be allowed.

Bond to be given on obtaining certiorari.

Affidavit to be filed and writ to be issued.

Service of writ, and payment of fees, and the effect thereof.

Return to writ of certiorari.

Circuit court may compel return.

How argument may be brought on.

intention to remove the case to the circuit court, and shall, within the same time, make, or cause to be made, an affidavit, setting forth the substance of the testimony, and the proceedings in the county court, and the grounds upon which an allegation of error is founded.

SEC. 47. Such affidavit shall, within thirty days after the rendition of the judgment, be presented to the circuit judge or circuit court commissioner of the proper county, and if he shall be satisfied that an error affecting the merits of the controversy has been committed by the court or jury, in the proceedings, he shall allow the certiorari by endorsing his allowance thereon.

SEC. 48. The party thus obtaining a certiorari, shall execute to the opposite party a bond with one or more sufficient sureties, to be approved by the circuit judge or circuit court commissioner, in a penalty double the amount of the judgment, for debt, damages and costs, conditioned to prosecute such certiorari to effect, and abide the judgment of the circuit court therein, and pay all debts, damages and costs that may be awarded against him, which bond need not be executed by the party procuring the certiorari, if executed by two or more sureties satisfactory to the officer allowing the certiorari.

SEC. 49. The affidavit required by this section, after the allowance of the certiorari, shall be filed in the office of the clerk of the said circuit court, and thereupon the said clerk shall issue a writ of certiorari, in the common form heretofore in use as near as may be.

SEC. 50. Such writ of certiorari shall, within thirty days after the date thereof, or within such further time as the circuit judge or officer allowing the same shall in such allowance direct, be served upon the judge by whom the judgment was rendered, together with the bond given, and a copy of the affidavit on which the certiorari was allowed, and the sum of two dollars shall be then paid to the said judge for his fees for making a return to the writ, and no writ of certiorari shall be of any effect until all the preceding requisitions shall have been fully complied with; and if the certiorari, bond and affidavit shall be served on the judge before execution issued on the judgment, it shall stay the issuing thereof; and if the execution shall have been issued, the court issuing it shall give the party a certificate of the issuing and service of the certiorari, which being served on the officer having the execution shall suspend the same.

SEC. 51. The county judge, before the return day of such certiorari, or within ten days after the service thereof, shall make return thereto in writing and file the same; in which return he shall truly and fully answer to all the facts set forth in the copy of the affidavit on which the certiorari was allowed, and shall cause the certiorari, bond, and copy of the affidavit, and his return thereto, to be attached together and filed in the office of the clerk of the circuit court of his county.

SEC. 52. The circuit court may compel such judge to make or amend such return, by rule, order or attachment, as the case may require.

SEC. 53. When such return shall be filed in the office of the clerk of the circuit court, the cause may be brought on to argument at the next term of the circuit court thereafter, without any assignment or joinder in error, unless there be an allegation of error in fact, and without furnishing any other copy or copies of the affidavit, certiorari and return to the court or the opposite party, than those filed with the clerk.

SEC. 54. The circuit court shall then proceed to give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections or defects in the proceedings before the county court, which did not affect the merits, and may affirm or reverse the judgment, in whole or in part, and execution shall issue thereupon as upon other judgments in the circuit court.

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Judgment and execution in circuit court.

SEC. 55. If the judgment be affirmed, costs shall be awarded to [the] defendant in error, if reversed, costs shall be awarded to the plaintiff in error; and if judgment be affirmed in part, the costs may be awarded as to the court shall seem just.

Costs on rendering judgment in circuit court.

SEC. 56. No judgment in a county court shall be reversed, merely for the omission or mis-recital of an oath, nor on account of any fees having been improperly allowed by the court, nor on account of any informality or insufficiency of any bond given by the party bringing the certiorari, provided another bond to be approved by the court, shall be given within such time as the court shall direct.

For what causes judgment of county court not to be reversed.

SEC. 57. If a judgment in the county court be collected, and afterwards reversed, the circuit court shall award restitution of the amount so collected, with seven per cent. interest from the time of such collection, if the party claiming the award present to the court satisfactory evidence of the fact of such collection having been so made, at any time before judgment is rendered in the circuit court.

When restitution to be awarded by circuit court.

SEC. 58. The compensation of the county judge shall be such fees for his services as shall be provided by law, and shall be taxed as costs of suit.

Compensation of county judges.

CHAPTER 93.

OF COURTS HELD BY JUSTICES OF THE PEACE.

SECTION 1. Every justice of the peace elected in any township or city of this state, and duly qualified according to law, shall have power to hold a court in his township or city, and shall have original jurisdiction of all civil actions wherein the debt or damages demanded do not exceed the sum of one hundred dollars, except as is provided in the next section, and to hear, try and determine the same according to law.

Jurisdiction of justices of the peace.

1841, p. 81.

SEC. 2. No justice of the peace shall have cognizance of real actions, actions for libel or slander, or for malicious prosecutions, except in the cases specially provided by law, nor when the title to real estate shall come in question.

Actions of which justice has no jurisdiction.

SEC. 3. Such court shall have authority to render judgment upon the confession of any person, made in writing and signed by the person making the same, in the presence of the justice, when the amount shall not exceed the sum of two hundred and fifty dollars.

Judgments upon confession.

SEC. 4. Each of said courts is hereby vested with all such powers, for the purpose of exercising the jurisdiction conferred by this chapter, as are usual in courts of record, except the power of setting aside a verdict, and arresting judgment thereon.

General powers of justices courts.

SEC. 5. Every action commenced in such court, shall be brought before some justice of the peace of the township or city where,

Where actions to be commenced.

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1. The plaintiffs, or any of them reside : or,
2. Where the defendants, or any of them reside : or,
3. Before some justice of another township or city, in the same county, next adjoining the residence of the plaintiff or defendant, or one of the plaintiffs or defendants.

Where action may be brought against absconding defendant.

SEC. 6. But if a defendant shall have absconded from his residence, such action may be brought before a justice of the township or city in which said defendant or his property may be ; and if the plaintiffs be all non-residents of the county, or if the defendant be a non-resident of the county, then such action may be brought before any justice of the township or city where such plaintiffs or defendants, or either of them may be.

Action of covenant or debt on bond, &c.

SEC. 7. When there shall be a bond with a penalty exceeding one hundred dollars, with condition for the payment of a sum of money not exceeding one hundred dollars, or for the payment of several sums of money by instalments, the aggregate of which instalments shall not exceed one hundred dollars, an action of covenant or debt may be maintained, on such condition, in a justices' court : and a recovery of either of such instalments shall not bar a subsequent suit for the other instalments which shall become due after the commencement of the former suit.

Justice not to hold court in bar room.

SEC. 8. No justice of the peace shall hold any court, or hear any examination in a bar-room, grocery, or other room or place where intoxicating liquors shall be sold.

Cases of which justice shall not take cognizance.

SEC. 9. No justice shall take cognizance of any cause, or do any judicial act, when he shall be related within the fourth degree, according to the rule of the civil law, of affinity or consanguinity to either party in any such matter, or shall have been of counsel, or shall be directly or indirectly, interested in such cause or matter.

Of the commencement of Suits, and the Service and Return of Process.

Suits how instituted. Statement of plaintiffs' claim to accompany summons, &c.

SEC. 10. Suits may be instituted before a justice, either by the voluntary appearance of the parties, or by process ; and when by process, it shall be either a summons, a warrant, or an attachment, and every summons and attachment shall be accompanied by a brief statement in writing, signed by the plaintiff, his agent or attorney, under oath before the justice issuing the same, setting forth the nature of his claim, and the amount due after allowing all credits, if any, which the defendant is by law entitled to set off in the cause, and the amount of damages claimed in the process, shall be the amount for which judgment is demanded or claimed to be due in such statement.

Offers to be made by parties, and noted by justice.

SEC. 11. In every case before a justice of the peace, after issue is joined, the plaintiff shall state the amount for which he will take a judgment, and the defendant the amount for which he will confess a judgment, which offers shall be noted by the justice, and such offers shall not prejudice the parties on trial.

Recovery of costs.

SEC. 12. If on the trial a judgment be rendered in favor of the plaintiff, equal to the sum and interest for which he shall have offered to take judgment, he shall recover full costs against the defendant ; if he shall recover a sum less than his offer, but more than was offered by the defendant, he shall recover one-half of his taxable costs ; and if the plaintiff shall recover any sum, but not greater than the offer of the defendant, and the interest thereon, he shall not recover any costs, but the defendant shall be entitled to his costs, to be deducted from



the judgment; if he shall fail to recover any sum, or if the defendant shall obtain a judgment against the plaintiff, such defendant shall be entitled to all his costs.

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SEC. 13. Suits shall be considered as commenced at the times following:

When suit deemed to be commenced.

1. Upon process by warrant, at the time of the arrest of the defendant:

2. Upon process by attachment, replevin or summons, on the day when process shall be delivered to the constable. But if two or more suits be commenced, by summons or attachment, on the same day, the suit in which the process was first served, shall be deemed to have been first commenced:

3. When the suit is instituted without process, at the time when the parties shall appear before the justice and cause the same to be entered.

SEC. 14. The first process, except as hereinafter directed, shall be a summons, directed to any constable of the county in which the justice resides, commanding him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in such summons, not less than six nor more than twelve days from the date of the same, except as hereinafter provided, to answer the plaintiff in a plea in the same summons to be mentioned. Summons.

SEC. 15. A summons shall in all cases, except as hereinafter otherwise provided, be served at least six days before the time of appearance mentioned therein; and if the defendant be found, it shall be served by reading the same to such defendant, and (if required by him) delivering a copy thereof; but if the defendant shall not be found, it shall be served by leaving a copy thereof at the defendant's last place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of its contents. How summons served.

SEC. 16. If it appear by the return of the constable that the summons was not personally served, and the defendant shall not appear on the return day thereof, the plaintiff may thereupon take out a new summons against the defendant in continuation of his suit, returnable not less than three, nor more than twelve days from the date thereof, which shall be served at least two days before the time of appearance mentioned therein, and if such summons be returned that the defendant cannot be found after diligent inquiry, the plaintiff may, in further continuation of his suit, have an attachment against the defendant. New summons and attachment in certain cases.

SEC. 17. Any plaintiff shall be entitled to an attachment against a defendant, in any action founded on a judgment, or on a contract, express or implied, if such plaintiff, or some person in his behalf, shall make and file with the justice, an affidavit, specifying as near as may be the amount due to the plaintiff, and showing to the satisfaction of the justice, either, Attachment, when to issue.

1. That the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal, any of his property, with the intent to defraud his creditors: or,

2. That he is about to remove any of his property from the county in which such application is made, or from the county where the defendant resides, with the like intent: or,

3. That he fraudulently contracted the debt, or incurred the obligation, respecting which the suit is brought: or,

4. That the defendant has absconded to the injury of his creditors,

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When plaintiff
entitled to war-
rant.

or does not reside in this state, and has not resided therein for one month immediately preceding the time of making the application.

SEC. 18. The plaintiff shall be entitled to a warrant upon filing with the justice an affidavit, made by such plaintiff or some one in his behalf, showing to the satisfaction of said justice, either,

1. That the plaintiff has a demand against the defendant for money collected by him as a public officer : or,

1839, p. 76, § 2,

2. That the plaintiff has a demand against the defendant for damages arising from the misconduct or neglect of the defendant, in any professional employment, or public office : or,

3. That the plaintiff's demand is for damages [occasioned] by a breach of promise to marry.

1b.

SEC. 19. In actions other than those founded on judgment or contract, the plaintiff shall be entitled to a warrant, if he or some person in his behalf shall make and file with the justice an affidavit, specifying the nature of the demand, and showing to the satisfaction of such justice, either,

1. That the defendant has committed a trespass or other wrong to the damage of the plaintiff : or,

2. That the defendant has incurred a penalty or forfeiture, by the violation of some law of this state, for which the person filing such affidavit has a right to prosecute in the name of the people of this state, or otherwise.

Affidavit to show
facts and circum-
stances.

SEC. 20. In all cases, on application for a warrant or attachment, under the provisions of either of the preceding sections, the person applying therefor shall, by affidavit, show the facts and circumstances, within the knowledge of the person making such affidavit, constituting the grounds of the application, whereby the justice may the better judge of the necessity and propriety of issuing such warrant or attachment.

Contents of war-
rant.

SEC. 21. A warrant shall be directed to any constable of the county in which the justice issuing the same resides, and shall command such constable to take the defendant and bring him forthwith before such justice, to answer the plaintiff in a plea to be mentioned therein, and shall require him, after he shall have arrested the defendant, to notify the plaintiff or prosecutor of the arrest.

Warrant, how
served and re-
turned.

SEC. 22. A warrant shall be served by arresting the defendant and bringing him forthwith before the justice issuing the same; but if such justice, on the return thereof, shall be absent, or unable to hear or try the cause, or if it shall appear by the affidavit of the defendant, that such justice is a material witness in his behalf on the trial of the cause, the constable shall take the defendant before some other justice of the same township or city, if there be one therein qualified to try the same, and if not, then before some other justice in an adjoining city or township, who shall take cognizance of the cause, and proceed thereon as if the warrant had been issued by him.

Justice to pro-
ceed to try cause
unless there be
an adjournment,
&c.

SEC. 23. When the defendant shall be brought before the justice on a warrant, the justice shall then, or within three days thereafter, unless the parties agree to allow a longer time, or there be an adjournment, proceed to hear, try and determine the cause.

Bond to be filed
before attach-
ment issues.

SEC. 24. In all cases of attachment, the plaintiff shall, before the issuing of the attachment, file with the justice a bond to the defendant, in the penal sum of two hundred dollars, with sufficient sureties to be approved by the justice in writing thereon, signed by him, con-

ditioned to pay the defendant all damages and costs he may sustain by reason of the issuing of the attachment, if the plaintiff shall fail to recover judgment in such suit.

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SEC. 25. Every attachment shall state the amount claimed by the plaintiff, and shall command any constable of the county in which the justice resides, to attach so much of the goods and chattels of the defendant, excepting such as are exempt by law from execution, as will be sufficient to satisfy such demand, and safely keep the same, to satisfy any judgment that may be recovered by the plaintiff in such attachment, and to return the same at a time therein to be specified, not less than six nor more than twelve days from the date thereof.

Contents of attachment.

SEC. 26. The constable serving such attachment, shall execute the same at least six days before the return thereof, by seizing so much of the goods and chattels of the defendant within his county, as shall be sufficient to satisfy the demand and costs, and making an inventory thereof, and serving a copy of such attachment and inventory upon the defendant, if he can be found within the county.

Attachment, when and how served.

SEC. 27. If the defendant cannot be found within the county, the constable shall leave a copy of the attachment and inventory, certified by him at the last place of residence of the defendant, if there be any such place within the county, and if not, then by leaving the same with any person in whose possession such goods and chattels, moneys or effects may be found.

Copy to be left if defendant cannot be found.

SEC. 28. No goods or chattels attached, shall be removed by the constable, if a bond be executed and delivered to him by any person, with sufficient surety, to be approved by such constable, in a penalty at least double the sum stated in the attachment to have been sworn to, conditioned that such goods and chattels shall be produced to satisfy any execution that may be issued on any judgment that shall be recovered by the plaintiff upon such attachment; and thereupon the officer shall deliver the property attached to the person executing such bond.

Goods not to be removed if bond given.

SEC. 29. If any person other than the defendant, shall claim any goods or chattels attached by a constable, he may, after such seizure, and at any time before execution shall have been issued upon the judgment obtained on such attachment, execute a bond to the plaintiff, with sufficient sureties to be approved by the constable, or by the justice who issued the attachment, in a penalty double the value of the property attached, conditioned that in a suit to be brought on such bond, within three months from the date thereof, such claimant will establish that he was the owner of the goods seized, at the time of the seizure; and in case of his failure to do so, that he will pay to such plaintiff the value of the property attached, with interest. Whenever suit is brought on such bond, and judgment is obtained thereon, such judgment shall not be stayed, but execution may issue thereon forthwith against the principal and sureties in said bond.

Claimant of goods may give bond.

SEC. 30. Upon either of the bonds aforesaid, being executed and delivered to the constable, he shall deliver up the property seized by him, to the obligor in such bond.

On the delivery of bond property to be delivered to obligor.

SEC. 31. If the attachment be returned personally served upon any of the defendants, the justice shall proceed therein in the same manner as upon a summons returned personally served.

How justice to proceed in case of personal service of attachment.

SEC. 32. If the attachment shall not be personally served upon any of the defendants, and none of the defendants shall appear on the re-

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If attachment not personally served, cause to be continued.

turn day thereof, the justice shall, upon the request of the plaintiff, adjourn the cause not less than three nor more than ten days, and thereupon issue a summons in the same suit returnable on said adjourned day, and if the summons shall be returned personally served, the justice may, at the return day thereof, proceed therein as in other cases of personal service of process; but if, upon diligent inquiry, the defendants, or any of them, cannot be found, then the justice shall continue the cause for three months; and in such case no hearing shall be had, or judgment rendered thereon until the expiration of that time, unless the defendant shall sooner appear and request a trial, in which case the justice shall appoint a day for the trial of such suit, and cause notice thereof to be given to the plaintiff.

If defendant appear before judgment and give bond, property to be discharged.

Sec. 33. If at any time before judgment, the defendant shall appear and answer to the action, and shall give bond to the plaintiff in a penalty double the amount claimed by the plaintiff, with one or more sureties to be approved by the justice, conditioned to pay any judgment the plaintiff may recover against him in the action, within thirty days after the rendition thereof, the justice shall thereupon make an order discharging the property attached.

Constable to return time and manner of serving process.

Sec. 34. The constable serving a summons, warrant, attachment or other process, shall return thereon in writing, signed by him, the time and manner of executing the same; and in case of a warrant, he shall in such return state the fact whether he has or has not notified the plaintiff.

Copy of inventory, &c., to be returned.

Sec. 35. In case of an attachment, the officer shall also return upon the writ, or attached thereto, a copy of the inventory of the property attached, certified by him, and any bond which may have been executed and delivered to him, pursuant to the foregoing provisions.

Proceedings against persons as garnishees.

Sec. 36. If the plaintiff or other credible person shall make and attach to the writ an affidavit, stating therein that the deponent has good reason to believe that any person (naming him) has property (describing it) money, credits or effects in his possession belonging to the defendant, or that he is indebted to the defendant, the officer shall leave with such garnishee, or at his place of abode, a copy of the writ of attachment, and of such affidavit, with a written notice that he appear in court on the return day mentioned in such attachment, and answer under oath all questions put to him touching his indebtedness to the defendant, and the property, money, credits and effects of the defendant, in his possession, and within his knowledge; and the said garnishee, from the time of the service of such notice, shall stand liable to the plaintiff in attachment to the amount of the property, money, credits and effects in his hands, or due from him to the defendant. The service of such notice shall be deemed the commencement of a suit against such garnishee, and upon the return of the constable, that such notice has been duly served, the justice shall enter such suit on his docket, as in other cases, the plaintiff in attachment being named as the plaintiff therein; and if such garnishee does not appear in court, as required, it shall be lawful for the justice to continue the cause so commenced against him, to some other day, not exceeding three months, and may, in his discretion, issue a warrant to bring the said garnishee before him; which warrant shall require the constable, after he shall have arrested the garnishee, to notify the plaintiff in attachment of the arrest, and shall be served and returned as other warrants issued by justices of the peace. On the appearance of the said

garnishee before the justice, it shall not be necessary for the plaintiff to declare against him, but the affidavit and notice aforesaid shall be deemed sufficient declaration in the cause, and the justice shall forthwith, or on the day to which he may adjourn the cause as in other cases, (but so as not beyond the time fixed for the trial of the suit in attachment) proceed to examine the said garnishee, and all witnesses produced on either side in that behalf, touching the matters alleged in the affidavit aforesaid, and shall take minutes of all such testimony and file the same in the case in his office; and after such examination is concluded, the suit against the garnishee shall be continued until the action against the defendant in attachment shall be determined, and the garnishee may appear for said defendant in said suit and defend the same; and if the plaintiff recover against the defendant in attachment, and said garnishee deliver to the officer executing the writ of attachment all the property and effects in his possession belonging to such defendant, and pay all moneys due from him to said defendant at the time notice was served on said garnishee, or so much of said property and moneys as may be necessary to satisfy said judgment against said defendant and all costs, then the costs which may have accrued against the garnishee in such suit shall be paid out of the effects in the hands of the officer. But if the garnishee will not deliver over said property, and pay such money as aforesaid, judgment shall be given against him in the suit commenced by notice as aforesaid in favor of the plaintiff therein; which judgment shall, when the value of such property and effects, or the amount of money due by such garnishee to the defendant in attachment, is less than the amount of the judgment in attachment for damages and costs, be to the amount of such value or money with costs of suit; but in other cases for the whole amount of the damages and costs in attachment, together with full costs of the suit against such garnishee, and execution shall issue on such judgment as in other cases.

Of the Appearance of Parties.

SEC. 37. No process shall be issued for an infant plaintiff, nor shall any issue joined by such plaintiff without process, be heard, until a next friend for such plaintiff shall be appointed.

When process
not to issue, &c.,
until next friend
appointed.

SEC. 38. Whenever requested, the justice shall appoint some suitable person, to be named by such plaintiff, who will consent thereto in writing, to act as his next friend in such suit, who shall be responsible for the costs therein.

Appointment of
next friend for
infant plaintiff.

SEC. 39. After the service and return of process against an infant defendant, the suit shall not be any further prosecuted until a guardian for such defendant be appointed; and the justice, upon the request of such defendant, shall appoint some person who will consent thereto in writing, to be guardian of the defendant, in the defence of the suit.

Guardian for in-
fant defendant.

SEC. 40. If such defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, on motion of the plaintiff, appoint any discreet person to be such guardian.

When guardian
for defendant not
to be appointed on
motion of plain-
tiff.

SEC. 41. The consent of every such next friend or guardian, shall be filed with the justice; and the guardian for the defendant shall not be liable for any costs in the suit.

Consent of next
friend, &c., to be
filed.

SEC. 42. Every plaintiff and defendant of full age, may appear and

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Parties of full age may conduct suit or defence when constable not to act for party.
When attorney to prove his authority.

conduct his suit or defence, either in person or by attorney; but the constable who served either the original or jury process in the cause, shall not appear and advocate for either party at the trial.

SEC. 43. The authority to appear as attorney for any party, may be either written or verbal, and such authority shall be proved by the attorney, or other competent testimony, in all cases when requested by the opposite party, or when the opposite party shall not appear, unless the person so appearing be an attorney of a court of record of this state.

Of Pleadings and Set-offs.

Pleadings, when to be had, and issue to be joined.

SEC. 44. At the time of the first appearance of the parties before the justice, either upon the return of process, or their voluntary appearance to join issue, the pleadings of the parties shall be made, unless the justice shall allow further time, upon cause shown; and when both parties have appeared, an issue shall be joined before an adjournment shall be had, except as aforesaid; and when the defendant shall have appeared upon a warrant, the pleadings shall be made within such reasonable time as the justice shall allow for that purpose.

Pleadings, how made.

SEC. 45. The pleadings in a suit before a justice of the peace may be either written or verbal, and shall contain a concise statement of the party's claim or demand, or nature and ground of defence, except in a case of plea or notice of title to land. When written they shall be filed and remain with the justice, when verbal, the justice shall enter in his docket the substance thereof.

Set-offs.

SEC. 46. In the following cases, and under the following circumstances, a defendant may set off demands which he has against the plaintiff:

1. It must be a demand arising upon judgment, or upon contract express or implied, whether such contract be written or unwritten, sealed or without seal; and if it be founded upon a bond or other instrument having a penalty, the sum equitably due by virtue of its condition only shall be set off:

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee or owner of the demand:

3. It must be a demand for real estate sold, or for personal property sold, or for money paid, or services done; or if it be not such a demand, the amount must be liquidated, or be capable of being ascertained by computation:

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant:

5. It can be allowed only in actions founded on demands which could themselves be the subject of set-off according to law:

6. If there be several defendants, the demand set off must be due to all of them jointly, unless the defendants shall prove an agreement of the plaintiff or plaintiffs, that the demand proposed to be set off, should apply as payment upon his or their claim:

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the cause of action upon which the suit is founded, in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified:

8. If the action be founded upon a contract, (other than a negoti-



able promissory note or bill of exchange,) which has been assigned by the plaintiff, a demand existing against such plaintiff or any assignee of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such plaintiff, or such assignee, while the contract belonged to him :

9. If the action be upon a negotiable promissory note or bill of exchange, which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt, may be made of a demand existing against any person or persons, who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set-off against the assignor, while the note or bill belonged to him :

10. If the plaintiff be a trustee for any other, or if the suit be in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's debt, if the same might have been set off in an action brought in their own names, by those beneficially interested.

SEC. 47. To entitle a defendant to a set-off, he must give notice of the same, specifying the nature of his claim with reasonable certainty, at the time of joining issue on a question of fact upon the merits of the cause. Notice of set-off.

SEC. 48. If the amount of the set-off duly established, be equal to the plaintiff's debt, judgment shall be entered for the defendant, with costs; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; if it be more than the plaintiff's debt, and the balance found due to the defendant from the plaintiff in the action, be one hundred dollars or under, judgment shall be rendered for the defendant for the amount thereof with costs; and execution shall be awarded as upon a judgment in a suit brought by him; but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the suit, shall have been assigned before the commencement of each (*such*) suit, nor for any balance due from any other person than the plaintiff in the action. Judgment and execution in cases of set-off.

SEC. 49. If the balance found due to the defendant, exceed one hundred dollars, the justice shall set off so much of the defendant's demand against the plaintiff's debt, as shall be sufficient to satisfy it, if requested to do so by the defendant, and shall render judgment for the defendant for his costs; but if the defendant shall not require such set off, the justice shall render judgment of discontinuance against the plaintiff, with costs to the defendant; and the defendant may thereafter sue for and recover his demand in any court having cognizance thereof. Judgment in case of balance of more than one hundred dollars due defendant.

SEC. 50. Whenever a set-off is established in a suit brought by executors or administrators, and the defendant shall be entitled to judgment, such judgment shall be rendered against the plaintiffs in their representative character, and shall be evidence of a debt established, to be paid in the course of administration, but no execution shall issue thereon. Judgment for set off against executors, &c.

SEC. 51. If a defendant neglect to set off any demand, which, according to the preceding provisions, might have been allowed to him Defendant neglecting to set-off

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demand precluded from recovering costs.

Notice showing that title will come in question.

Plea and notice to be in writing, &c.

Bond to be given by defendant.

Action to be discontinued on delivery of bond.

If bond not delivered, justice to proceed, &c.

When justice to dismiss cause.

When suit discontinued on plea and notice, plaintiff may commence in county court.

Costs in county court.

When suit discontinued for one cause of action, and continued for others.

on the trial of the cause, he shall be forever thereafter precluded from recovering costs in any action brought to recover such demand or any part thereof, which might have been set off.

SEC. 52. In every action where the title of lands shall in anywise come in question, the defendant, at the time he is required to join issue, and not after, may give a notice under the general issue, showing that the title to lands will come in question, and may also give notice of any other matter of defence to the action.

SEC. 53. Such plea and notice shall be in writing, and signed by the defendant or his attorney, and delivered to the justice, who shall then countersign the same and deliver them to the plaintiff.

SEC. 54. At the time of tendering such plea and notice, the defendant, with at least one sufficient surety, to be approved by the justice, shall enter into a bond to the plaintiff, in a penalty of at least two hundred dollars, conditioned, if such plaintiff shall commence a suit in the county court, within thirty days thereafter, for the same cause of action whereon he relied before the justice, that such defendant will appear and plead to such action, and pay any judgment that may be rendered against him in such action.

SEC. 55. Such bond shall be delivered to the justice at the time of tendering such plea and notice, and on payment of costs by the defendant, the action shall be discontinued; and the costs so paid by the defendant, shall be allowed to him, if he recover costs in the action brought in the county court, if any be brought within the time aforesaid; if no suit be brought in the county court within thirty days after the delivery of the bond, the defendant may recover of the plaintiff the costs so paid by him as aforesaid, together with his own costs in the suit before the justice.

SEC. 56. If such bond be not delivered as herein directed, the justice shall have jurisdiction of the cause, and proceed therein, and the defendant shall be precluded in his defence from all evidence drawing in question the title to lands, and any claim of title to lands made by the plaintiff in his declaration, and therein described, shall be deemed to be admitted by the defendant.

SEC. 57. If it appear on the trial, from the plaintiff's own showing, that the title to land is in question, which title shall not be admitted by the defendant, the justice shall dismiss the cause, and the defendant shall recover costs.

SEC. 58. When a suit is discontinued before a justice by the delivery of a plea and notice, and a bond as above provided, the plaintiff may prosecute an action for the same cause in the county court; and the plaintiff in such suit shall declare only for the same cause of action whereon he relied before the justice, and the plea and notice of the defendant shall be the same which he tendered before the justice.

SEC. 59. If the judgment in such suit in the county court shall be for the plaintiff, he shall recover double costs; if it be for the defendant, (other than judgment of non-suit or non pros,) and the court before which the issue is tried, shall not certify that the title to lands did come in question, the defendant shall not recover costs, but shall pay costs to the plaintiff.

SEC. 60. If the plaintiff's declaration in a suit before a justice, shall contain several causes of action, to one or more of which a defence bringing in question the title to lands shall be interposed by the

defendant, and he shall tender a plea and notice to such court, and deliver a bond as above provided, the justice shall discontinue proceedings for such cause of action, and the plaintiff may commence a suit in the county court therefor; and for the other causes of action the justice may continue his proceedings.

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Of Adjournments.

SEC. 61. If the plaintiff or defendant shall make it appear to the satisfaction of the justice, by his oath, or the oath of his attorney, that he cannot safely proceed to trial for the want of some material testimony or witness, the justice shall postpone the trial for such reasonable time, and so often as he shall deem it proper, not exceeding in all, three months; provided, that a party claiming an adjournment after a former adjournment has been had, shall further make it appear to the satisfaction of the justice, that he has used reasonable diligence to procure such testimony or witness since the last preceding adjournment.

Adjournments,
how obtained,
&c.

SEC. 62. No party shall be entitled to an adjournment after he shall have seen the account or demand of the adverse party, unless he shall exhibit his account or demand, if any he has to be litigated or passed upon in the suit, or shall state the nature thereof as far forth as may be in his power, to the satisfaction of the justice.

When party not
entitled to ad-
journment, un-
less he exhibit
his account, &c.

SEC. 63. If a cause commenced by warrant, be adjourned upon the application of the defendant, he shall continue, during the time of adjournment, in the custody of the constable, unless he shall give bond to the plaintiff, in the sum of two hundred dollars, with sufficient surety or sureties, to be approved by the justice, conditioned that such defendant will render himself in execution, in case judgment shall be rendered against him in the suit, and that no part of his property liable to execution shall be removed, secreted, assigned or disposed of, except for the necessary support of himself and family, until any judgment the plaintiff may obtain against him shall be satisfied, or until the expiration of ten days after the plaintiff shall be entitled to execution thereon.

Defendant on
warrant obtain-
ing adjournment
may give bond
and be discharg-
ed.

SEC. 64. If such cause be adjourned on the consent of both parties, or if it be adjourned on the application of the plaintiff, the defendant shall be discharged from custody; but the cause shall not be discontinued by such discharge, and at the adjourned day, the same proceedings shall be had, as in case of a summons returned personally served.

If cause adjourn-
ed by consent,
&c., defendant
to be discharged.

Of Compelling the Attendance of Witnesses.

SEC. 65. Any justice of the peace may issue subpoenas, to compel the attendance of witnesses to give evidence in any cause or matter depending before himself or any other justice or court, arbitrators or referees, and such subpoena shall be valid to compel the attendance of a witness being in the same county where the cause or matter is to be tried, or being in any other county, and within thirty miles of the place of trial.

Justice may is-
sue subpoenas,
&c.

SEC. 66. A subpoena may be served either by a constable or any other person; and it shall be served by reading the same, or stating the contents to the witness; and by paying or tendering the fees allowed by law for traveling, and one-half day's attendance.

Subpoena, by
whom and how
served.
1842, p. 135, § 5.

SEC. 67. Whenever it shall appear by the affidavit of the party in the

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When justice may issue attachment for witnesses.

Attachment against witness, how executed, and fees, by whom paid.

Penalty for refusing to appear or to testify.

How fine imposed, &c.

When execution to issue, and how executed.

Money collected to be returned and paid over.

Witness neglecting to appear, or refusing to testify, liable for damages, &c.

Issues, how tried by justice, &c.

When justice to proceed to hear proofs of plaintiff, &c., if defendant fails to appear.

suit, or by other competent testimony, to the satisfaction of the justice, that any person duly subpoenaed to appear before him in any cause, shall have refused or neglected, without just cause, to attend as a witness in conformity to such subpoena, and that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness.

SEC. 68. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officers for issuing and serving the same, shall be paid by the person against whom the same shall have been issued, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case, the party requiring such attachment, shall pay all costs of such attachment and service of the same.

SEC. 69. Every person duly subpoenaed as a witness, who shall not appear, or who appearing, shall refuse to testify, shall forfeit for every such non-appearance or refusal, (unless some reasonable cause or excuse shall be shown on his oath, or the oath of some other person,) a sum not less than one dollar, nor more than ten dollars.

SEC. 70. Such fine may be imposed by the justice, upon the witness being brought before him on attachment, and the justice shall thereupon make and enter in his docket, a minute of the conviction, and the cause thereof, and the same shall be deemed a judgment, in all respects, at the suit of the people of this state.

SEC. 71. Upon the imposition of such fine, and in default of payment thereof, with costs, the justice shall forthwith issue an execution to any constable of the county, commanding him to levy such fine, with costs, of the goods and chattels of the delinquent, and for want thereof, to take and convey him to the jail of the county, there to remain until he shall pay such fine and costs; and the keeper of such jail shall keep such delinquent in close custody in such jail, until the fine and costs be paid; but such imprisonment shall not exceed thirty days.

SEC. 72. When money shall be collected on such execution, the constable shall return the same to the justice, and such justice shall pay over the amount to the county treasurer, to be distributed according to law.

SEC. 73. Every person subpoenaed as aforesaid, and neglecting or refusing to appear or testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain, by reason of such non-appearance or refusal; and in all cases when any fees shall be paid to any person for attendance or travel as a witness, and such person shall fail to attend, he shall refund the amount paid.

Of the Trial of Issues of Fact, and the Incidents thereto.

SEC. 74. Whenever issue shall have been joined in a suit before a justice, if no jury shall have been demanded by either party, the justice shall proceed to try such issue, to hear the proofs and allegations of the parties, and to determine the same according to law, as the very right of the case may appear.

SEC. 75. Whenever a defendant who has been personally served with a summons or attachment, or who shall have procured an adjournment, without having joined issue, shall neglect to appear and join issue, the justice shall proceed to hear the proofs and allegations of the plaintiff, and determine the same as above prescribed; provided,

that no judgment for damages shall in any such case be rendered for an amount greater than the amount of damages claimed in the process.

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SEC. 76. After an issue of fact joined, and before the justice shall proceed to an investigation of the merits of the cause, by an examination of a witness, or the hearing of any other testimony, either of the parties, or the attorney of either of them, may demand of the justice that the cause may be tried by a jury, and pay to the justice the lawful fees of the jurors.

When party may demand jury.

SEC. 77. Upon such demand and payment of such fees to the justice, such justice shall direct some disinterested constable or other proper person of the county, to write down a list of the names of eighteen inhabitants of the county qualified to serve as jurors in courts of record, who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit.

Constable or other person to make list.

SEC. 78. The constable or other person directed to make such list, shall, before making the same, be sworn by the justice, to select such persons according to his best judgment, and without favor or partiality to either party.

Person making list to be sworn.

SEC. 79. From such list each party may strike off six names, and in case of the absence or refusal of either party to strike out, the justice shall strike out for him six names from said list; and the justice shall thereupon issue a venire, directed to any constable of the county, requiring him to summon the six persons whose names shall remain upon the list, to appear at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such venire; and the constable shall serve such venire personally on each juror named therein, if to be found within his county.

Striking names from list, and summoning jurors.

SEC. 80. The parties may agree upon six, or any less number of jurors to try the cause; and in such case the justice shall direct in the venire, the summoning of the persons so agreed upon, who, when summoned and appearing, shall compose the jury; and the justice shall make a minute of such agreement in his docket.

Parties may agree upon jury, who shall be summoned, &c.

SEC. 81. If any of the jurors named in the venire shall not be found, or shall fail to appear according to the summons, or if there shall be any legal objection to any one who shall appear, it shall be the duty of the constable, on being thereunto directed by the justice, to summon a sufficient number of talesmen to supply the deficiency.

When talesmen to be summoned to supply deficiency.

SEC. 82. To each juror the justice shall administer an oath or affirmation, well and truly to try the matter in difference between plaintiff, and defendant, and unless discharged by the justice, a true verdict to give, according to law and evidence.

Oath to jurors.

SEC. 83. After the jury shall be duly sworn, they shall sit together and hear the proofs and allegations of the parties, which shall be delivered publicly, in their presence.

Jury to hear proofs, &c.

SEC. 84. No ex parte affidavit of any person shall be allowed or given in evidence on any trial, either with or without a jury, unless the parties agree to allow the same.

Ex parte affidavit not to be received unless parties consent.

SEC. 85. In any action brought before a justice of the peace on a book account, or where any book account shall be offered as a set-off, if the party claiming the same shall make oath that there is no disinterested witness whose attendance he could procure, by whom he can prove the facts relating to such account, the parties to such action and any other persons interested in the event of the suit may produce in court the book containing the account or any part thereof, and may

When parties may be examined in relation to account.

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Party may be witness to prove death, &c. of subscribing witness, or loss of instrument.

Objection to competency of witness to be tried by justice.

Oath of witness.

Oath to be administered to constable attending jury.

Verdict to be delivered publicly, and entered, and judgment rendered thereon.

When jury may be discharged, and new jury summoned.

Penalty on juror for not appearing, or refusing to serve.

When justice a witness, suit to be transferred, &c.

be examined on oath in relation to such account, or any item thereof.

SEC. 86. A party in a suit, or having an interest in the event thereof, may be a witness to prove the death or absence beyond the reach of a subpoena of the justice, of a subscribing witness to, or the loss of, any instrument which shall come in question on the trial, in order to introduce other proofs of the execution or contents of such instrument.

SEC. 87. If a witness, on being produced, shall be objected to as incompetent, such objection shall be tried and determined by the justice; and evidence may be given in support of, or against such objection, as in other cases: or the proposed witness may be examined on oath by the party objecting, and if so examined, no other testimony shall be received, from either party, as to the competency of such witness.

SEC. 88. Every person offered as a witness, before any testimony be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in difference between plaintiff, and defendant, shall be the truth, the whole truth and nothing but the truth.

SEC. 89. After hearing the proofs and allegations, the jury shall be kept together in some convenient place, under the charge of a constable, until they shall agree upon their verdict, and for that purpose, the justice shall administer to such constable the following oath:

You do swear, (or affirm, as the case may be,) that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial, in some private and convenient place, without meat or drink, except such as shall be ordered by me; that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed upon.

SEC. 90. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, and thereupon the justice shall enter the same in his docket, and render judgment thereon.

SEC. 91. Whenever a justice shall be satisfied that a jury sworn in any cause before him, cannot agree on their verdict, after having been out a reasonable time, he may discharge them, and thereupon a new jury shall be selected and summoned as hereinbefore directed, within forty-eight hours, unless the parties agree upon a longer time, or consent that the justice may render judgment on the evidence already before him, which, in such case, he may do.

SEC. 92. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default; or appearing, shall refuse to serve, shall be subject to the same fine, to be imposed and collected with costs, in the same manner, and paid over for the same use, as hereinbefore provided in respect to a person subpoenaed as a witness, and not appearing, or appearing, and refusing to testify.

SEC. 93. If before joining issue in any cause, the defendant or his attorney shall make affidavit that the justice before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, the justice shall make an

entry of the filing of such affidavit in his docket, and an order that the suit, and all the papers relating thereto, be transferred to some other justice of the same township or city, to be named in such order, who may thereupon proceed to hear, try and determine the cause, in the same manner as if the suit had been originally commenced before him, and with the like effect.

Of Judgments, and Filing Transcripts thereof.

SEC. 94. Judgment of non-suit, with costs, shall be rendered against a plaintiff prosecuting an action before a justice of the peace, in the following cases :

When judgment of non-suit to be rendered against plaintiff.

1. If he discontinue or withdraw his action :
2. If he fail to appear on the return of any process, within one hour after the same was returnable :
3. If after an adjournment, he fail to appear within one hour after the time to which the adjournment shall have been made :
4. If he become non-suited on the trial.

SEC. 95. Judgment for the defendant, with costs, shall be rendered whenever a trial has been had, and it be found by verdict, or by the decision of the justice, that the plaintiff has no cause of action against the defendant.

When judgment to be rendered for defendant.

SEC. 96. Whenever a judgment shall be rendered by a justice against any party, unless herein otherwise provided, it shall be with costs of the suit ; but the whole amount of all the items of such costs shall not, in any case, exceed five dollars.

Costs on rendition of judgment

SEC. 97. If process shall have issued against two or more persons, jointly indebted, and shall have been personally served upon either of the defendants, the defendant who may have been served with process, shall answer to the plaintiff ; and the judgment in such case, if rendered in favor of the plaintiff, shall be against all the defendants in the same manner as if all had been served with process ; but execution shall issue only in the manner hereinafter directed.

Proceedings in case of process against two or more, and service on either.

SEC. 98. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein ; but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence.

Effect of judgment in such case.

SEC. 99. A judgment obtained before a justice in any suit commenced by attachment, in which the defendant was not personally served, and did not appear, shall be only presumptive evidence of indebtedness in any suit which may be brought thereon, or in which the same may come in question, and may be repelled by the defendant.

Judgment upon attachment not personal, served, presumptive evidence only.

SEC. 100. In cases where a plaintiff shall be non-suited, discontinue or withdraw his action, and where a judgment shall be confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and enter the same in his docket ; in all other cases, he shall render judgment and enter the same in his docket, within four days after the cause shall have been submitted to him for his final decision.

When judgment to be rendered.

SEC. 101. When a balance shall be found in favor of a party, either by the verdict of a jury, or upon a hearing before the justice, exceeding the sum for which the justice is authorized to give judgment, such

When party may remit excess, and take judgment for residue.

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When justice to give transcript of docket, &c., on demand.

party may remit and release the excess, and may take judgment for the residue.

SEC. 102. Whenever an execution shall be returned unsatisfied in whole or in part, it shall be the duty of a justice of the peace having control of such judgment, for twenty dollars or over, exclusive of costs, on the demand of any person in whose favor the same shall have been rendered, or his attorney, to give a certified transcript of such judgment, and of the proceedings in the case so far as they appear upon the docket, together with the original security for stay of execution, if any security shall have been given.

On affidavit being made, clerk to file transcript and docket judgment.

SEC. 103. If the plaintiff, his agent or attorney, shall make an affidavit, stating the amount due upon such judgment, it shall be the duty of the clerk of the circuit court for the county in which such judgment shall have been rendered, to file such transcript and security for stay of execution in his office when requested, and to enter and docket the judgment in a book to be kept by him for that purpose, noting therein the time of receiving it, and the amount sworn to be due.

Effect of judgment so docketed, and execution thereon.

SEC. 104. Such judgment shall have the same effect as a judgment rendered in the circuit court, and may in the same manner be enforced, discharged and canceled; and execution may be issued thereon against both the surety and the person against whom the judgment was rendered.

Of Executions and Proceedings thereon.

Execution, when to be issued and made returnable.

SEC. 105. Upon any judgment being rendered before a justice of the peace, he shall issue execution thereon, if requested, at the time and in the manner hereinafter prescribed; which shall be dated on the day when it actually issued, and made returnable in sixty days thereafter.

Contents of execution, and how directed.

SEC. 106. Such execution shall be directed to any constable of the same county, and shall command him, in the name of the people of the state of Michigan, to levy the debt or damages, with interest and costs, of the goods and chattels of the person or persons against whom the same shall be issued, (excepting such goods and chattels as are by law exempted from execution,) and bring the money before such justice at the time and place therein to be mentioned, to render to the party who recovered the same.

When execution to command constable to take the body.

SEC. 107. In all cases where, by the provisions of this chapter, an execution may be issued against the body of any person, it shall, if the judgment creditor require it, contain a further command to the constable, that if no such goods or chattels can be found, or not sufficient to satisfy such execution, he shall take the body of the person against whom the same shall be issued, and convey the same to the common jail of the county, there to remain until such execution shall be paid and satisfied, or he be discharged by due course of law.

When execution to issue against principal and surety.

SEC. 108. In all cases where security shall have been given for the stay of execution, as hereinafter provided, if the debt or damages with interest and costs shall not be paid within the time limited by law therefor, execution shall be issued by the justice on application of the judgment creditor, his agent or attorney, against both principal and surety, with the same effect as if the judgment had been rendered against both such principal and surety upon a joint liability, after the return of process personally served; except that no such execution shall be issued against the body of the surety.

SEC. 109. An execution issued by a justice of the peace may authorize the arrest and imprisonment of the person against whom the judgment is rendered in the following cases:

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In what cases execution may authorize arrest of defendant.

1. When the action in which such judgment was rendered, shall have been commenced by warrant:

2. When the plaintiff or some one in his behalf, shall, at or after the time of rendering the judgment, make and file with the justice an affidavit, setting forth the facts and circumstances which would have entitled him to a warrant against the defendant, according to the provisions of this chapter.

SEC. 110. In the cases mentioned in the preceding section, and also in suits commenced by attachment, execution shall, on application of the person in whose favor the judgment was rendered, his agent or attorney, be issued forthwith after the rendition of the judgment, unless such execution be stayed as hereinafter provided.

Execution when to issue forthwith unless stayed.

SEC. 111. Upon all judgments rendered by justices of the peace, except in the cases mentioned in the two last preceding sections, executions shall issue as follows:

When execution to issue in certain cases.

1. If the amount recovered, exclusive of costs, does not exceed fifty dollars, at the expiration of three months from the entering of the judgment:

2. If the amount recovered, exclusive of costs, exceed fifty dollars, at the expiration of six months from the entering of the judgment:

And executions, in such cases, shall not issue sooner, without the consent, in writing, of the person against whom the judgment was obtained, or the proof in the next section specified.

SEC. 112. If the party obtaining such judgment, shall make it appear by his own oath, or other competent testimony, to the satisfaction of the justice, that such party will be in danger of losing the amount recovered by him, unless execution issue sooner than is prescribed in the last preceding section, such justice shall issue execution immediately, unless the same be stayed by the party against whom the same was rendered, as hereinafter provided.

When execution to be issued on oath of party.

SEC. 113. Application for such execution may be made at the time of rendering the judgment; or if reasonable notice be given to the adverse party of the intention to apply for such execution, such application may be made at any time after the judgment shall have been rendered.

When application for execution may be made.

SEC. 114. The party against whom any judgment shall be recovered, may stay the execution thereon until the expiration of the time herein before prescribed, by giving to the party in whose favor judgment was obtained, and filing with the justice within five days after the justice shall be authorized to issue execution thereon, security in writing, with one or more sufficient sureties, satisfactory to the judgment creditor or the justice, for the payment of the money, with interest and costs, at or before the expiration of three months from the time of rendering such judgment, if such money shall not exceed fifty dollars, exclusive of costs; and at or before the expiration of six months, if such money exceed fifty dollars, exclusive of costs.

How party against whom judgment is recovered, may stay execution, &c.

SEC. 115. In all cases where execution shall have issued within the five days herein before specified, if the judgment debtor shall within that time, give security for the stay of execution as aforesaid, the justice shall make an order recalling the execution; and if the same has been levied upon property, such property shall, upon the produc-

Execution may be recalled on giving security, &c.

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tion of such order to the constable, be forthwith released therefrom, and returned to the person from whom it was taken; and if the judgment debtor be in custody thereon, the officer in whose custody he may be, upon the production of such order, shall forthwith discharge him therefrom.

Execution on judgment against joint debtors, when process not served on all, justice to endorse the names of those not served, &c.

SEC. 116. When a judgment shall be obtained against joint debtors, upon process which was not served upon all the defendants, execution may be issued in form against all; but the justice shall endorse thereon the names of such of the defendants who did not appear in the suit, as were not served with process of warrant, summons or attachment.

How such execution may be collected.

SEC. 117. Such execution shall not be served upon the persons of the defendants whose names are endorsed thereon; nor shall it be levied upon the sole property of any defendant, who neither appeared in the suit nor was served with such process; but it may be levied and collected of the several property of any defendant who appeared or was served with process, or of the joint or copartnership property of all the defendants.

Further execution.

SEC. 118. If any execution be returned unsatisfied, in whole or in part, a further execution for the amount remaining due, may be issued upon the request of the plaintiff, or a party interested therein.

Execution may be issued at any time within two years, &c.

SEC. 119. An execution may be issued upon any judgment recovered before a justice of the peace, at any time within two years after such judgment shall have been rendered, or after the issuing of a former execution which shall have been returned unsatisfied, in whole or in part.

Endorsement of levy, and notice of sale.

SEC. 120. The constable, after taking goods and chattels into custody, by virtue of an execution, shall endorse thereon the time of levying the same, and immediately give public notice, by advertisement, signed by himself and put up at three public places in the city or township where such goods and chattels shall be taken, when and where they will be exposed for sale.

Notice to describe goods, &c.

SEC. 121. Such notice shall describe the goods and chattels, and shall be put up at least five days before the time appointed for the sale.

Goods to be exposed to sale at vendue to highest bidder.

SEC. 122. At the time and place so appointed, or at such other time as the sale may be adjourned to within the life of the execution, the goods and chattels being present, and pointed out to the inspection and examination of the bidders, the constable shall expose them to sale at vendue to the highest bidder.

Return of execution and payment of damages, &c.

SEC. 123. The constable shall return the execution, and pay the debt or damages and costs levied, to the justice who issued the same, or in case of his death, absence or removal from office, then to the justice having the custody of his docket, returning the surplus, if any, to the person against whom the execution issued.

Constable not to purchase at sale.

SEC. 124. No constable shall, directly or indirectly, purchase any goods or chattels, upon any sale made by him upon execution; and every such purchase shall be absolutely void.

When constable to take body of defendant, &c.

SEC. 125. For want of sufficient goods and chattels whereon to levy, the constable shall, in the cases authorized by law, if the execution require it, take the body of the person against whom the execution shall have issued, and convey him to the common jail of the county, the keeper whereof is hereby required to keep such person in safe custody in jail, until the debt or damages and costs shall be paid, or he be thence discharged by due course of law.

SEC. 126. No female shall be arrested or imprisoned upon any execution issued by a justice of the peace.

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SEC. 127. If a constable shall neglect to return an execution and pay over the moneys by him collected thereon within five days after the return day thereof, or shall neglect to levy an execution, or otherwise execute the same according to law, the party in whose favor such execution was issued, or who shall be entitled to such moneys, may maintain an action of assumpsit in his own name upon the instrument of security given by such constable and his sureties; and in such suit the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued, shall be recovered; and execution shall issue forthwith, and no stay of execution shall be allowed.

No female to be arrested on execution.
If constable neglect to return execution, &c., action may be maintained against him and his sureties.

SEC. 128. No constable shall levy upon, or sell any property, or imprison a defendant upon any execution, after the time limited therein for its return.

Constable not to levy, &c., after return day.

SEC. 129. Whenever a transcript of a judgment rendered by a justice of the peace, shall have been filed and docketed by the clerk of the circuit court for the county, all executions thereon shall be issued out of, and under the seal of such circuit court, and the power and authority of the justice in respect to such judgment shall cease.

When transcript filed and docketed, execution to issue out of circuit court, &c.

SEC. 130. Whenever an execution shall be issued out of the circuit court on a justice's judgment, it shall be in the same form, as near as may be, as other executions issued out of such court, against the goods and chattels, lands and tenements, of the person against whom it shall issue; and in cases where execution against the body of any person against whom the judgment was rendered, might have been issued by the justice thereon, such execution shall command the sheriff, for want of goods and chattels, lands and tenements, to satisfy such execution, to take the body of such person and commit him to the jail of the county, there to remain until discharged by due course of law; and to make return of his proceedings thereon to the said court, within ninety days from the date thereof.

Contents of execution from circuit court.

SEC. 131. The jurisdiction of justice (*justices*) of the peace in actions of replevin under the 124th chapter, shall extend to all cases where the value of the property replevied shall be assessed by the appraisers at one hundred dollars or under; and in such actions, the plaintiff, his agent or attorney, shall make and file an affidavit with the justice, and give the bond, and the officer shall proceed in the same manner in executing the writ of replevin, and the cause shall proceed in the same manner, as nearly as may be, as is provided in said chapter; but no justice of the peace shall give judgment in any such action for more than one hundred dollars, and appeals shall be allowed on any such judgment in the same manner and with the like effect as upon other judgments rendered by justices of the peace.

Jurisdiction of justices in actions of replevin, and proceedings in such actions.

SEC. 132. In actions of replevin, no exceptions shall be taken to the sureties taken of the plaintiff by the officer in (on) the delivery of the property to such plaintiff, but such officer shall be liable for the sufficiency of such sureties. No jury shall be required to try the issue in any action of replevin before a justice of the peace, unless the same be demanded by one of the parties as in other cases.

Liability of sheriff for sufficiency of sureties. Jury not required unless demanded

SEC. 133. All actions of assumpsit, debt, covenant and trespass on the case against corporations, where the amount claimed or matter in controversy shall not exceed one hundred dollars, shall be cogni-

Jurisdiction of justices in actions against corporations.

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Process against corporations, and on whom to be served.

zable before a justice of the peace in like manner and with like restrictions as the same actions are or may be by law cognizable before a justice of the peace, when brought against an individual.

SEC. 134. The first process against a corporation shall be by summons, and shall be served by leaving a true and attested copy thereof with the president, cashier, secretary, or other principal officer of such corporation, or by leaving such true and attested copy at the banking house, counting room or office of such corporation, or at the last and usual place of abode of such president, cashier or other principal officer, at least five days before the return day thereof; and upon perfecting such service, and legal return thereof being made, such corporation shall be deemed in court, and like proceedings, as near as may be, shall be thereupon had as in cases of suit (*suits*) between individuals.

Execution against corporations.

SEC. 135. When judgment shall be rendered against a corporation, no security for stay of execution shall be entered except at the option of the plaintiff, and execution may issue forthwith.

When plaintiff not to recover costs, and when suit to be dismissed.

SEC. 136. If the plaintiff, at the time of the commencement of the suit against a corporation, shall have in his possession or under his control more promissory bank notes or other evidences of debt than he declares and obtains judgment for, and he afterwards procures or causes to be procured, on the balance, or any part of the balance of the same, a judgment against such corporation, he shall not be entitled to recover costs in any but the first judgment rendered, and to ascertain the fact the defendant may require the plaintiff or his agent to make oath thereto, and if the amount so possessed by, or under the control of the plaintiff as aforesaid, exceeds one hundred dollars, the said plaintiff shall be precluded from commencing a suit before a justice of the peace, and any suit so commenced shall be dismissed by the justice with costs against the plaintiff.

Pre-requisites to commencement of suit on bank notes.

SEC. 137. No suit shall be commenced on any bank notes, until said notes shall have been first presented for payment at the banking house of the bank purporting to have issued them; nor until the person making application for the process shall have made oath that the demand on which he requests process to be issued is his own property, or the property of the plaintiff in the suit, and that the amount by him owned and possessed does not exceed one hundred dollars.

Construction of five preceding sections.

SEC. 138. The five preceding sections shall not be construed to extend to municipal corporations.

Setting off executions.

SEC. 139. Executions between the same parties, upon judgments recovered in their own right, may be set off, one against another, if required by either party, in the following manner: When one of the executions is delivered to a constable to be served, the person who is the debtor therein, may deliver his execution to the same constable, and such constable shall apply the amount thereof, so far as [it] will extend, or so far as may be necessary, to the satisfaction of the first execution; and the balance due on the larger execution shall be collected and paid in the same manner as if there had been no set-off.

Of Appeals.

In what cases party may appeal to county court.

SEC. 140. Any party to a judgment rendered by any justice of the peace in this state, conceiving himself aggrieved by the rendition of such judgment, may appeal therefrom to the county court of the county in which the same was so rendered, in the following cases:



1. Where final judgment was rendered on an issue of law joined between the parties :

2. Where final judgment was rendered upon an issue of fact joined between the parties :

3. Where the defendant did not appear and plead, and final judgment was rendered for the plaintiff on the merits of his claim :

4. Where a judgment of non-suit or discontinuance has been rendered.

SEC. 141. No party against whom a judgment has been rendered by a justice of the peace upon any claim arising on contract express or implied, shall appeal therefrom to the county court, unless such party, his agent or attorney shall, within five days after the rendition of such judgment, make and present to such justice an affidavit alleging therein that the party recovering such judgment had recovered therein at least five dollars more than was justly and honestly due such party.

Affidavit in case of judgment on contract against party appealing.

SEC. 142. No party in whose favor a judgment has been rendered by a justice of the peace upon any claim arising upon contract express or implied, shall appeal therefrom to the county court, unless such party, his agent or attorney shall, within five days after the rendition of such judgment, make and present to such justice an affidavit, alleging therein that such judgment was not rendered for as much by at least eight dollars as was justly and honestly due such party.

Affidavit in case of judgment on contract in favor of party appealing.

SEC. 143. No party against whom a judgment has been rendered by a justice of the peace in any action other than those arising upon contract express or implied, shall appeal therefrom to the county court, unless such party, his agent or attorney shall, within five days after the rendition of such judgment, make and present to such justice an affidavit, alleging therein that such judgment was at least eight dollars more than it ought to have been rendered for under the evidence in the case, according to the knowledge and belief of the person so making such affidavit.

Affidavit in case of judgment for tort against party appealing.

SEC. 144. No party in whose favor a judgment has been rendered by a justice of the peace in any action other than those arising upon contract express or implied, shall appeal therefrom to the county court, unless such party, his agent or attorney shall, within five days after the rendition of such judgment, make and present to such justice an affidavit, alleging therein that such judgment is not as much by at least ten dollars as it ought to have been rendered for under the evidence in the case, according to the knowledge and belief of the person so making such affidavit.

Affidavit in case of judgment for tort in favor of party appealing.

SEC. 145. Either party conceiving himself injured and aggrieved may appeal from a judgment rendered by a justice of the peace in a (an) action of replevin to the county court, by presenting such justice, within five days after the rendition of such judgment, an affidavit made by himself, his agent or attorney, in which it is alleged that such judgment is not in accordance with the legal and just rights of such party so appealing, as the person making such affidavit verily believes, and otherwise complying with the requisition of this act as hereinafter provided, but the provisions of this and the four preceding sections, shall not apply to the fourth subdivision of section one hundred and forty.

Affidavit in cases of replevin. Application of this and the four preceding sections.

SEC. 146. If any party shall appeal from a judgment rendered by a justice of the peace as hereinbefore provided, such party, his agent or

Recognition on appeal.

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attorney shall, within five days after the rendition of such judgment, enter into a recognizance with at least one responsible surety, in a sum not less than double the amount of the judgment and costs, conditioned to prosecute such appeal with due diligence to judgment in the county court of the proper county, and to abide the order such court may make thereon, and to pay any such judgment as such court may render against the party so appealing, together with the interest and costs thereon.

Costs and fees, to be paid to justice, amount of recognizance.

SEC. 147. The party so appealing, his agent or attorney, shall, at the time of entering into such recognizance, pay to such justice the costs of the suit, and one dollar for making and filing his return to the county court; such recognizance shall in no case be in a less sum than fifty dollars.

Sureties to justify.

SEC. 148. No justice of the peace shall receive any recognizance on appeal as hereinbefore provided, unless the person entering into the same as surety justifies his responsibility on oath, and answers any question touching his pecuniary circumstances, which such justice may deem proper to put.

When justification not necessary—certificate to be endorsed on recognizance.

SEC. 149. Such justification shall not be necessary when the opposite party or his attorney admits the pecuniary responsibility of such surety to be sufficient, and it shall be the duty of the justice, at the time such recognizance is received, to certify thereon whether the surety justified or his responsibility was admitted as aforesaid.

Proceedings on judgment suspended by appeal, &c.

SEC. 150. Upon an appeal being made according to the foregoing provisions, all further proceedings on the judgment before the justice shall be suspended; and if, in the meantime, execution shall have been issued, the justice shall give the appellant a certificate that an appeal in the cause has been duly made in the case.

When property, &c., to be released.

SEC. 151. On such certificate being presented to the officer holding the execution, such officer shall forthwith release any goods and chattels levied on, or release the body of the appellant if taken; and if such appellant has been committed to prison, the jailor shall, upon such certificate being served upon him, forthwith release such appellant from prison.

Return of justice to appeal.

SEC. 152. Within ten days after any appeal shall have been made, the justice shall make a return of the proceedings had before him to the county court for the county, in which shall be stated,

1. The title of the cause, and the character in which the parties prosecuted or defended before him:

2. The demand of the plaintiff, and if his declaration was in writing, a copy thereof shall be set forth:

3. The plea of the defendant, and any notice of set off or matter of defence given by him, and all other proceedings of the parties upon which an issue was formed; and if in writing, copies thereof shall be set forth:

4. If the trial was by jury, the names of the jurors and their verdict:

5. The judgment rendered, and the time of rendering the same; and,

6. The time when the recognizance hereinbefore required was delivered to the justice, and the fees of the justice were paid.

Return, &c., of justice to be filed within ten days after appeal made.

SEC. 153. Within ten days after the appeal shall be duly made, the justice shall file with the clerk of the county court, his return made as above directed, together with all papers filed with him by either party rela-

ting to the cause, and the affidavit and recognizance delivered to him by the appellant.

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How return compelled.

SEC. 154. If a return shall not be made by a justice, according to law, either party may file with the clerk of the county court, an affidavit, stating that such appeal has been duly made, and that the justice has failed to make his return to such court according to law, whereupon the county judge shall issue an order in writing, requiring the justice to make such return within ten days after service of such order, or show cause to the court, at a time to be named therein, why an attachment should not be issued against him.

SEC. 155. If no return be made pursuant to such order, the county court, upon proof that the appeal has been duly taken, and the order served, may, on the application of the appellant, issue an attachment to compel the return of the justice, of his proceedings and of all papers and matters required to be returned by him.

Ib.

SEC. 156. Upon satisfactory evidence that the return of a justice is substantially erroneous or defective, the court may, in like manner, compel him to amend the same.

Compelling amendment of erroneous return.

SEC. 157. Upon an attachment being issued against a justice pursuant to either of the foregoing sections, the court may punish the disobedience of the justice, by imprisonment until he submit, and may adjudge that he pay the costs of the proceedings against him; and such order shall be enforced as other orders of the court.

Disobedience of justice how punished.

SEC. 158. Upon the return of the justice being made and filed, if the appeal be not dismissed, and the nature and circumstances of the case, and of the questions presented by the return, are such as not to require a trial by jury, the county court shall have power to examine and determine the same, and to give such judgment, or make such order in the case, as law and justice between the parties shall require.

When court to determine appeal.

SEC. 159. All cases brought into the county court by appeal, as provided in this chapter, which cannot otherwise be properly determined or disposed of by the court, shall be tried by a jury.

When appeal to be tried by jury.

SEC. 160. On the second Monday after the filing of the return of the justice, the court, on the application of the appellant, shall name a time for the hearing of the appeal, of which time the appellant shall give notice in writing, by serving such notice on the appellee personally, ten days at least before the day of hearing; and when such personal service cannot be had, the notice shall be left at the last place of abode of said appellee.

When time of hearing appeal to be named, and notice thereof.

SEC. 161. At the time so named for the trial of the appeal, if the appellee do not appear, and proof be made that the notice required by the preceding section, has been duly served, the court may proceed to hear, try and determine the cause as in other cases.

When court may hear cause.

SEC. 162. If the appellant shall fail to make such application, or to give notice thereupon as required by the two preceding sections, the court shall dismiss the appeal.

When appeal to be dismissed.

SEC. 163. No appeal shall be dismissed, on account of any informality or imperfection in the recognizance entered into by or on behalf of the appellant, if he and his sureties consent to amend the same, or if another sufficient recognizance, to be approved by the court, shall be entered into; and in such case the court shall amend or receive such recognizance accordingly.

Appeal not to be dismissed in certain cases.

SEC. 164. No appeal shall be dismissed, on the ground that the costs of the justice has (have) not been paid, nor upon any other

Not to be dismissed because costs not paid.



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When costs to be awarded to appellee.

When appeal to be discontinued with costs.

When justice to proceed as if no appeal had been made.

When recognizance not to be sued until execution returned unsatisfied.

Powers of county court in allowing amendments, &c.

Costs, how awarded in certain cases.

ground than such as shall have been expressed in the notice; but in all cases, the fact of a return having been made by a justice, shall be conclusive evidence of such fees having been paid.

SEC. 165. If an appeal be dismissed or discontinued, the court shall enter judgment in favor of the appellee for costs.

SEC. 166. If an appeal be not prosecuted within such time as shall be prescribed by the court, the court shall order the same to be discontinued with costs.

SEC. 167. Upon an appeal being dismissed or discontinued, and a certified copy of the order of dismissal or discontinuance, being served upon the justice, he shall proceed thereon, as if no appeal had been made.

SEC. 168. The appellee in whose favor a judgment shall have been rendered, shall not be entitled to prosecute the bond (*recognizance*) given on an appeal which shall have been dismissed or discontinued, until an execution on the judgment appealed from shall have been returned that sufficient goods and chattels of such appellant cannot be found to satisfy the same.

SEC. 169. If the appeal be not dismissed, the county court shall proceed to the hearing of the cause or the trial thereof by jury as the case may require, and shall have power to allow all necessary amendments to the pleadings, or the filing of new pleadings in the cause, as right and justice between the parties may require, and upon such terms as the court shall deem equitable; and the court shall have the same power over the verdict of a jury, and shall render judgment thereon in the same manner as in other suits in such court.

SEC. 170. Cost in judgments rendered on appeals in county courts shall be as follows:

1. If the party against whom judgment was rendered in the court below, on contract, express or implied, appeal therefrom, and such judgment shall not be reduced in the county court five dollars or more, full costs shall be awarded against the appellant; if such judgment shall be reduced in the county court five dollars or more, then full costs shall be awarded against the appellee:

2. If the party in whose favor judgment was rendered in the court below, on contract express or implied, appeal therefrom, and such judgment shall not be increased in the county court, eight dollars or more, full costs shall be awarded against the appellant; if such judgment shall be increased in the county court eight dollars or more, then full costs may be awarded against the appellee, or otherwise, as such court may deem right and just:

3. If the party against whom judgment was rendered in the court below on any claim other than contract express or implied, appeal therefrom, and such judgment shall not be reduced in the county court eight dollars or more, full costs shall be awarded against the appellant; if such judgment shall be reduced in the county court eight dollars or more, then full costs shall be awarded against the appellee.

4. If the party in whose favor judgment was rendered in the court below on any claim other than contract, express or implied, appeal therefrom, and such judgment shall not be increased in the county court, ten dollars or more, full costs shall be awarded against the appellant: if such judgment shall be increased in the county court ten dollars or more, then full costs may be awarded against the appellee, or otherwise, as such county court may deem right and just:

5. In judgments rendered on appeals in actions of replevin, or judgment of non-suit or discontinuance, and all other causes, costs may be awarded as the county court may deem to be just and right between the parties in view of the particular circumstances attending each case.

SEC. 171. In all cases heard and determined by the court, without trial by jury, if the judgment appealed from be affirmed, costs shall be awarded to the appellee; if the judgment appealed from be reversed, costs shall be awarded to the appellant; if judgment be affirmed in part, the costs, or such part thereof as to the court shall seem just, may be awarded to either party.

Costs in cases heard and determined by court.

SEC. 172. Whenever costs are awarded to the appellant he shall be allowed to tax, as part thereof, the fee paid to the justice, and the costs, if any, which he ought to have recovered in the cause before the justice; and when costs are awarded to the appellee upon a hearing or trial of the cause in the county court, he shall be allowed to tax as a part thereof, the costs, if any, which he ought to have recovered in the cause before the justice.

What costs parties allowed to tax in certain cases.

SEC. 173. If, upon an appeal, a recovery for any debt or damages be had by one party, and costs be awarded to the other party, the court shall set off such costs against such debt or damages, and render judgment for the balance.

When court to set off costs against debt or damages.

SEC. 174. In all cases where judgment shall be rendered against the appellant in the county court, the same may, on motion of the appellee, be entered, as well against the surety on the appeal, as against the appellant, and execution may issue against them jointly; but in such case the surety shall be discharged from such judgment, if no execution be issued thereon within thirty days after the rendition thereof, unless such surety consent to further delay.

When judgment to be entered against appellant and surety.

SEC. 175. If the judgment be rendered against the appellant alone, execution shall be issued thereon within thirty days after the rendition of the same, or the sureties in the recognizance shall be discharged.

Execution to issue against appellant in thirty days after, or sureties discharged.

General Provisions concerning Justices' Courts, and Proceedings therein.

SEC. 176. All process issued by a justice of the peace shall be signed by him, and may be under seal or without seal.

All process to be signed, &c.

SEC. 177. No constable shall ask or receive any money or valuable thing from a defendant or other person, as a consideration, reward or inducement for omitting to arrest any delinquent, or to carry him before any justice; or for delaying to take any party to prison; or for postponing the sale of any property under any execution; or for omitting or delaying the execution of any duty pertaining to his office.

Constable not to receive reward for omitting to arrest, &c.

SEC. 178. No justice of the peace or constable shall, directly or indirectly, buy or be interested in buying, any bond, note or other demand or cause of action, for the purpose of commencing any suit thereon before a justice; nor shall any justice or constable, either before or after suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money or valuable thing, to any person, in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such justice or constable, any debt, demand or cause of action whatever, for prosecution or collection.

Justice or constable not to buy claims for the purpose of suing, &c.

SEC. 179. No justice of the peace shall purchase, directly or indi-

No justice to purchase judgment

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rendered by him,
&c,
Punishment for
violation of three
last sections.

rectly, or be interested in the purchase of any judgment rendered by him.

SEC. 180. Every justice or constable, offending against either of the provisions of the three last preceding sections shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and every such conviction shall operate as a forfeiture of the office of the justice or constable so convicted.

What to be entered in justice's docket.

SEC. 181. Every justice of the peace shall keep a docket, in which he shall enter,

1. The title of all causes commenced before him :
2. The time when the first and any subsequent process was issued against the defendant, and the particular process issued :
3. The time when the parties appeared before him, either without process, or on the return of process :
4. When the pleadings are made orally, a concise statement of the declaration of the plaintiff, the plea of the defendant, the further pleadings of the parties, if any, and the issue joined :
5. Every adjournment, stating on whose motion, and to what time and place :
6. The issue of a venire, stating at whose request, and the time and place of its return :
7. The time when a trial was had, the names of the jurors returned summoned, who did not appear, and the fines imposed on them, if any :
8. The names of the jurors who appeared and were sworn, the names of the witnesses sworn at the request of either party, stating at whose request; the objections, if any, made to the competency of a witness, and the decision thereon :
9. The verdict of the jury, and when received:
10. The judgment rendered by the justice, and the time of rendering the same :
11. The time of putting in any stay of execution, and the name of the surety or sureties therefor :
12. The time of issuing execution, and the name of the officer to whom delivered :
13. The return of every execution, and when made :
14. The fact of an appeal having been made from any judgment rendered by him, and the time when made :
15. The fact of his having given a transcript of the judgment to be filed in the clerk's office, and the time when the same was given.

Items to be entered under title of cause to which they relate, &c.

SEC. 182. The several items in the preceding section enumerated, shall be entered under the title of each cause to which they respectively relate; and in addition thereto, the justice may enter any other proceedings had before him in such cause, which he shall think it useful to enter in such docket.

Original entry, &c., evidence before same justice.

SEC. 183. Whenever it shall become necessary in any action or other proceeding before a justice of the peace, to give evidence of a judgment, or other proceeding had before him, the original entry of such judgment or other proceeding, or a transcript thereof certified by him, shall be good evidence thereof before such justice.

SEC. 184. A transcript from the docket of any justice of the peace,

of any judgment had before him; of the proceedings in the cause previous to such judgment; of the execution issued thereon, if any, and of the return to such execution, if any; when certified by the justice having control of such docket, shall be evidence to prove the facts stated in such transcript.

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Certified transcript of judgment &c., evidence.

SEC. 185. The proceedings in any cause or matter, had before a justice, may also be proved by the oath of the justice; and in case of the death or absence of the justice, they may be proved by producing the original minutes of such proceedings, entered in a book kept by such justice, accompanied by proof of his hand writing, or they may be proved by producing copies of such minutes, sworn to by a competent witness, as having been compared by him with the original entries, with proof that such entries were in the hand writing of the justice.

Other proof of proceedings before justices.

SEC. 186. Every justice shall carefully preserve and file all affidavits and papers delivered to him to be filed in any cause.

Justices to file and preserve papers.

SEC. 187. Every justice shall keep an alphabetical index of all judgments entered in his docket book, in the course of any judicial proceedings had before him, in which shall be inserted the names of the parties to each judgment, and the page of his docket where such judgment is entered.

Index of judgments, &c.

SEC. 188. If any justice of the peace shall be absent, when there shall be pending before him any matter or suit undetermined, he may deliver over all the papers relating to such matter or suit, with a minute of his proceedings therein, to some neighboring justice of the same city or township, who may thereupon proceed to hear, try and determine such matter or suit, in the same manner as if such matter or suit had been commenced before him, and with like effect; but the parties to such matter or suit, their agents or attorneys, shall be notified of such transfer, previous to any hearing or trial of such matter or suit.

When justice may deliver papers, &c., to another justice who may proceed thereon, &c.

SEC. 189. When the term of office of a justice shall expire, if his successor shall be elected and qualified, he shall forthwith deliver over to such successor all the books and papers relating to his office as a justice of the peace.

When justice to deliver books and papers to successor.

SEC. 190. Whenever any justice shall be removed from office, or shall remove out of the township or city in which he was elected, or his office shall in any way become vacant, except by death, if his successor in office be not elected and qualified, such justice, or the person in whose possession the same may be, shall, within ten days after such vacancy shall happen, deliver to the township or city clerk, all the books and papers in his custody relating to his office as a justice of the peace.

When books, &c. to be delivered to clerk.

SEC. 191. In case any justice shall die, and any books or papers belonging to such justice in his official capacity, shall come to the hands of any person, the township or city clerk may demand and receive such books and papers from the person having the same in his possession; and it shall be the duty of every such person, within ten days after any such books or papers shall come to his possession, whether demanded or not, to deliver the same to the township or city clerk.

When clerk may demand books and papers.

SEC. 192. Whenever any township or city clerk shall receive the books and papers of any justice of the peace, as hereinbefore provided, he shall, within ten days from the time he received the same, de-

Clerk to deliver books, &c., to some justice of the township or city, and give notice.

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Notice what to specify.

liver them over to some other justice of the same township or city, and give notice thereof.

SEC. 193. Such notice shall specify the name of the justice whose books and papers shall have been so delivered, and to what justice, and when the same were delivered by such clerk, and shall be posted up in three of the most public places in such township or city.

When justice receiving books, &c., to proceed to hearing, &c. of matters pending.

SEC. 194. Whenever the office of any justice shall become vacant, by resignation, removal or otherwise, and there shall be pending before him any matter or suit undetermined, and the books and papers of such justice shall be delivered over to any other justice of the city or township, pursuant to the foregoing provisions, the justice to whom such books and papers shall be so delivered, shall proceed to hear, try and determine such matter or suit, and to issue execution thereon, in the same manner, and with the like effect, as he might have done if such matter or suit had been originally commenced before him.

Suits pending before justice when his office becomes vacant, continued as of course, and justice to give notice.

SEC. 195. All suits and proceedings pending before any justice of the peace, and undetermined when his office shall become vacant, shall be continued as of course until the expiration of ten days from the time when the books and papers of such justice are delivered over to another justice of the township or city as herein before provided, of which time the justice to whom such books and papers shall be delivered, shall cause at least three days' notice to be given to the parties to such suit or proceeding, or such of them as shall be within the county.

Justice receiving books and papers may issue execution.

SEC. 196. The justice to whom the books and papers of another justice shall have been transferred, as hereinbefore provided, may issue execution upon any judgment appearing upon the books so transferred, in the same manner, and with like effect, as if such judgment had been rendered by him.

When justice going out of office to make return to appeal.

SEC. 197. Whenever an appeal shall be duly made from a judgment rendered by a justice while in office, either before or after the justice shall have gone out of office, and before his books and papers shall have been delivered to the clerk of the township or city, or to his successor in office, it shall be the duty of such justice to make return to such appeal in like manner as if he were in office at the time of making such return.

When justice to whom books, &c. transferred, to make return to appeal.

SEC. 198. If a justice to whom a notice of appeal and bond (*recognizance*) shall have been duly delivered as hereinbefore provided, shall die, become insane, remove out of the state, or abscond, so that the return of such justice to the appeal cannot be compelled, the justice to whom his books and papers shall have been transferred, shall make and file with the clerk of the circuit (*county*) court, a transcript of the docket of the cause, together with all the papers relating thereto, and the circuit (*county*) court shall proceed thereon in the same manner as if return had been made by the justice who rendered the judgment therein.

Parties to have five days to appeal in certain cases, after transfer of books, &c.

SEC. 199. If, before the expiration of the time limited for appealing from any judgment rendered by a justice of the peace, the term of office of such justice shall expire, or his office otherwise become vacant, either party conceiving himself aggrieved by such judgment, may, within five days after the books and papers of such justice shall have been transferred to another justice pursuant to the foregoing provisions, deliver a notice of appeal and bond (*recognizance*) to the justice having control of such judgment, and pay him the fee hereinbe-

fore provided, and such justice shall, within ten days thereafter, make return to such appeal in the same manner, and with the like effect, as if the judgment appealed from had been rendered by him.

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SEC. 200. If, for any cause, a return to an appeal cannot be compelled, the court to which such appeal shall be made, may receive the affidavits of witnesses and of the parties, to the facts and circumstances of the proceedings, and of the judgment appealed from; and shall proceed thereon in the same manner as if such facts had been returned by the justice whose duty it was to make return to such appeal.

Proceedings in case return to appeal cannot be compelled.

SEC. 201. If any justice whose duty it shall be to make return to any appeal, shall, before making such return according to law, remove out of the county into any other county in this state, the court to which such appeal shall be made, shall have power to compel a return to such appeal in the same manner as if such justice had not removed.

Compelling return in case of removal of justice to another county.

SEC. 202. Every justice who shall issue any process authorized by this chapter, whenever he shall judge it expedient, on the request of a party, may by written authority endorsed on such process, empower any proper person, being of lawful age, and not a party or interested in the suit, to execute the same.

Justice may empower any proper person to serve process.

SEC. 203. The person so empowered shall possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, but shall not receive any fee or reward for his services thereon.

Authority of person so empowered.

SEC. 204. In the following cases, a justice of the peace may punish, as for a criminal contempt, persons guilty of the following acts:

In what cases a justice may punish as for a criminal contempt.

1. Disorderly, contemptuous or insolent behavior towards such justice, while engaged in the trial of a cause, or in the rendering of any judgment, or in any judicial proceedings, which shall tend to interrupt such proceedings, or to impair the respect due to his authority:

2. Any breach of the peace, noise or other disturbance, tending to interrupt any official proceedings of a justice:

3. Resistance wilfully offered by any person in the presence of a justice, to the execution of any lawful order or process made or issued by him.

SEC. 205. Punishment for contempts, in the foregoing cases, may be by fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding five days, or both, in the discretion of the justice, but no person shall remain imprisoned for the non-payment of such fine, more than ten days.

What punishment may be inflicted.

SEC. 206. No person shall be punished for a contempt before a justice, until an opportunity shall have been given him to be heard in his defence; and for that purpose, a justice may issue a warrant to bring the offender before him: or, if the contempt was committed in the presence of the justice, he may cause the offender forthwith to be arrested therefor without issuing any process in the first instance.

Person to have opportunity to be heard in his defence, &c.

SEC. 207. Upon convicting any person of a contempt, the justice shall make up a record of such conviction, stating therein the particular circumstances of the offence; and the warrant of commitment for any contempt shall also state the circumstances of the offence, or it shall be void.

Record of conviction and warrant of commitment, to state circumstances of offence.

SEC. 208. When a witness attending before any justice, in any

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When justice to commit witness refusing to be sworn or to testify.

Warrant what to specify.

Cause to be adjourned until witness shall testify, or be incapable, &c.

When partnership name may be used in process.

When defendant may be prosecuted by fictitious name, &c.

Constable may proceed on execution, after expiration of his term, &c.

When justice may require security for costs.

When property of principal debtor to be first exhausted.

Party to suit may be examined, and his attendance compelled.

cause, shall refuse to be sworn in the form prescribed by law, or to answer any pertinent and proper question, and the party at whose instance he attended, shall make oath that the testimony of such witness is so far material, that without it he cannot safely proceed to the trial of such cause, such justice may, by warrant, commit such witness to the jail of the county.

SEC. 209. Such warrant shall specify the cause for which the same is issued, and if it be for refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such warrant, until he submit to be sworn or to answer, as the case may be.

SEC. 210. The justice shall thereupon adjourn such cause at the request of the party in whose favor such witness attended, from time to time, until such witness shall testify in the cause, or be dead, or otherwise incapable of testifying as a witness.

SEC. 211. In all cases where a suit is commenced for or against a copartnership, and the names of all the several partners are not known, such suit may be commenced in the partnership name of said plaintiffs or defendants, and the plaintiffs or defendants shall have the right at any time before the pleadings are closed, to amend the same by inserting the names of the parties composing such copartnership.

SEC. 212. When the name of any defendant shall not be known to the plaintiff, he may be described in the process and proceedings by a fictitious name; and if a plea in abatement be interposed by such defendant, or his name be otherwise ascertained, the justice before whom the suit is pending shall amend the proceedings according to the truth of the matter, and shall thereafter proceed therein in like manner as if the defendant had been sued by his right name.

SEC. 213. Every constable to whom any execution shall have been delivered, and whose term of office shall expire before the time within which the return or collection of such execution is required by law, shall proceed thereon in the same manner, and shall have the same powers in relation thereto, as if his term of office had not expired; and such constable and his sureties shall be liable for any neglect of duty, and for moneys collected upon such execution, in the same manner, and to the same extent as if the term of office of such constable had not expired.

SEC. 214. Any justice of the peace may, in his discretion, require security of the plaintiff for costs in any action, either before or after the issuing of process; and the person becoming security therefor shall sign a memorandum to that effect, which the justice shall file and preserve; and in all cases, plaintiffs who are not residents of this state, shall give such security before process shall issue.

SEC. 215. Every officer having an execution in his hands for collection, upon an affidavit being served upon him, made by any co-defendant in such execution, his agent or attorney, showing the principal debtor therein, shall first exhaust all the personal estate of said principal debtor which may be turned out by any one of the defendants, before selling the property of any other defendant who may be surety in the demand upon which judgment was rendered.

SEC. 216. It shall be competent to call and examine any party to a suit, and to compel his attendance by subpoena or otherwise, in such manner, and under such restrictions and limitations as may be prescribed by law.

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OF CRIMINAL PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

SECTION 1. Any justice of the peace shall have power to hold a court subject to the provisions hereinafter contained, to hear and determine charges for offences arising within their respective counties, as follows :

Powers and jurisdiction of justices of the peace in certain criminal cases.

1. All cases of larceny, not charged as a second offence, when the value of the property stolen shall not exceed twenty-five dollars :

2. Cases of assault and battery, not charged to have been committed riotously, or upon any public officer in the execution of his duties, or with intent to commit any other offence :

3. Charges for wilfully destroying, removing, injuring or defacing any mile-stone or mile-board, or injuring or defacing any inscription or device upon any guide-post or guide-board on any highway, or removing, destroying or injuring any guide-post or guide-board :

4. Charges for wilfully and maliciously killing, maiming or disfiguring any horses, cattle, or other beast of another person, or for wilfully and maliciously destroying or injuring the personal property of another, by any other means, where the value of the beasts killed, or the injury done, shall not exceed twenty-five dollars :

5. Charges for wilfully and maliciously breaking down, injuring removing or destroying any monument erected for the purpose of designating the boundaries of any township, or any tract or lot of land, or any tree marked for that purpose ; or for wilfully and maliciously marring or defacing any building, or any sign board ; or wilfully and maliciously extinguishing any lamp, or breaking, destroying, or removing any lamp, or any lamp post, or any railing or post erected on any bridge, side-walk, street, highway, court, or passage :

6. Charges against any person for wilfully committing any trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land ; or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or any roots, fruit or plant there being, or by cutting down or carrying away any grass, hay, or any kind of grain, standing, growing, or being on such land, or by carrying away from any wharf or landing place, any goods whatever, in which he has no interest, of the value of five dollars or more :

7. Charges against any person for wilfully committing any trespass, by entering upon the garden, or orchard, or other improved land of another, without permission of the owner thereof, with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being :

8. And all other offences punishable by fine not exceeding one hundred dollars, or punishable by imprisonment in the county jail not exceeding three months, or punishable by both said fine and imprisonment.

Sec. 2. Upon complaint made to any justice of the peace by any constable or other person, that any of the foregoing offences have been committed within the county, he shall examine the complainant on oath and witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the com-

Proceeding on complaint made before justice.

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plainant, and if it shall appear that such offence has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed, forthwith to arrest the accused, and bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial.

Hearing and trial by justice.

SEC. 3. On the return of the warrant with the accused, the said justice shall proceed to hear, try and determine the cause within one week after the return of the same.

Bail for defendant's appearance, and commitment in case of failure.

SEC. 4. From the time of the return of the warrant until the time of the trial, the accused may give bail with one or more sufficient sureties for his appearance at the time fixed for the trial, or in the event of failure so to do, may be committed to jail for safe keeping by warrant of said justice, or left in custody of the arresting officer.

Charge to be read and plea entered.

SEC. 5. The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him, and he shall be required to plead thereto, which plea the court shall enter in their minutes; if the accused refuse to plead, the court shall enter the fact with a plea of not guilty in behalf of such accused in its minutes.

When issue to be tried by court.

SEC. 6. If the plea of the accused be not guilty, and no jury be demanded by him, the said court shall proceed to try such issue, and to determine the same according to the evidence which may be produced against and in behalf of such accused.

If defendant plead guilty, judgment to be rendered.

SEC. 7. If the accused shall plead guilty to such charge, the court shall thereupon convict him of the offence charged, and render judgment thereon.

If defendant demand trial by jury, list to be made, &c.

SEC. 8. After the joining of issue, and before the court shall proceed to an investigation of the merits of the cause, the accused may demand of such court that he be tried by a jury; whereupon the court shall direct the sheriff or any constable of the county to make a list in writing, of the names of eighteen inhabitants of the county qualified to serve as jurors in the courts of record of this state, from which list the complainant and accused may each strike out three names.

Proceedings if parties neglect to strike out names, venire for jury, &c.

SEC. 9. In case the complainant or the accused shall neglect to strike out such names, the court shall direct some suitable disinterested person to strike out the names for either or both the parties so neglecting; and upon such names being struck out, the justice shall issue a venire, directed to the sheriff or any constable of the county, requiring him to summon the twelve persons whose names shall remain upon such list, to appear before such court at the time and place to be named therein, to make a jury for the trial of such offence.

Service and return of venire.

SEC. 10. The officer to whom such venire shall be delivered, shall summon such jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire to the court within the time therein specified.

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SEC. 11. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the court shall supply the deficiency by directing the sheriff or any constable who may be present and disinterested, to summon any of the bystanders or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

SEC. 12. If the officer to whom the venire shall have been delivered, shall fail to return the same as thereby required, or if the jury shall fail to agree, and shall be discharged by the court, a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had, as herein prescribed in respect to the first jury, unless the accused shall consent to be tried by the court, in which case the court shall proceed to the trial of the issue, as if no jury had been demanded.

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When new jury to be summoned, &c.

SEC. 13. To each juror *one of such justices (justice)* shall administer the following oath or affirmation :

Oath to be administered to jurors.

"You do solemnly swear (or 'You do solemnly and sincerely declare and affirm,' as the case may be,) that you will well and truly try this cause between the people of the state of Michigan and

the accused, and a true verdict give according to law and the evidence given you in court, unless discharged by the court."

SEC. 14. After the jury shall have been sworn, they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after hearing such proofs and allegations, the jury shall be kept together in some convenient place, until they agree on a verdict, or are discharged by the court, and a sheriff or constable shall be sworn to take charge of the jury, in like manner as upon trials in justices' courts in civil proceedings.

Jury to sit together and hear proofs, &c., and to be kept together until they agree or are discharged, &c.

SEC. 15. When the jurors have agreed on their verdict, they shall deliver the same to the court, publicly, who shall enter it in the minutes of its proceedings.

Verdict, how delivered and entered.

SEC. 16. Whenever the accused shall be tried under the preceding provisions of this chapter, and found guilty either by the court or by a jury, or shall be convicted of the charge made against him upon a plea of guilty, the court shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such punishment shall in no case exceed the limit fixed by law for the offence charged.

Punishment to be inflicted on conviction.

SEC. 17. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or by a jury, shall be acquitted, he shall be immediately discharged; and if the court before whom the trial is had, shall certify in its minutes, that the complaint was wilful and malicious, and without probable cause, it shall be the duty of the complainant to pay all the costs that shall have accrued to the court and sheriff or constable, and jury, in the proceedings had upon such complaint, or to give satisfactory security by bond to the people of this state, with one or more sureties, to pay the same in thirty days after the said trial.

When defendant to be discharged and complainant to pay costs, &c.

SEC. 18. The person charged with, and convicted by any such justice of the peace, of any such offence, may appeal from the judgment of such justice of the peace to the circuit court; provided said person shall enter into a recognizance with one or more sufficient sureties conditioned to appear before said court and abide the judgment of the court therein. And the justice from whose judgment an appeal is taken, shall make a special return of the proceedings had before said justice; and shall cause the warrant and return, together with the recognizance or recognizances to be filed in said circuit court on or before the first day of the circuit court next to be holden for said county, and the complainant and witnesses may also be re-

Appeal by defendant after conviction, to circuit court.

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When judgment
to be rendered
against complain-
ant, and execu-
tion issued.

quired to enter into recognizances with or without sureties, in the discretion of the court, to appear at said circuit court at the time last aforesaid, and to abide the order of the court therein.

Judgments by
whom and how
executed.

SEC. 19. If the complainant shall refuse or neglect to pay such costs, or to give such security, the court may forthwith enter judgment against him for the amount of such costs, and forthwith issue execution thereon in the same manner, and with the like effect as in case of an execution issued by a justice of the peace, on a judgment in an action for a trespass or other wrong; and such moneys, when collected, shall be paid over to such court, and be applied to the payment of the costs for which the judgment was rendered.

Fines to whom
paid, before com-
mittal.

SEC. 20. The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hands (*hand*) of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment.

To whom fines
paid after com-
mittal.

SEC. 21. All fines imposed by any such court, if paid before the accused is committed, shall be received by the magistrate who constituted the court before which the accused was convicted, and by such magistrate paid over to the county treasurer, within thirty days after the receipt thereof, to be distributed according to law.

Suit to be prose-
cuted by county
treasurer if fine
not paid over.

SEC. 22. If the accused be committed, payment of any fine imposed on him, shall be made to the sheriff of the county; who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer for the purpose aforesaid.

Subpœnas for
witnesses, &c.

SEC. 23. If any person who shall have received any such fine, or any part thereof, shall neglect to pay over the same pursuant to the foregoing provisions, it shall be the duty of the county treasurer immediately to commence a suit therefor, and to prosecute the same diligently to effect.

Proceedings
against jurors
and witnesses
failing to appear,
&c.

SEC. 24. Any justice of the peace may issue subpœnas to compel the attendance of witnesses before any court held by a justice of the peace, and may administer all necessary oaths in proceedings before such court.

Certificate of
conviction, &c.

SEC. 25. In case any person summoned to appear before any court held by a justice of the peace pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing shall refuse to be sworn or to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Certificate to be
filed with clerk
of county.

SEC. 26. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Certificate or co-
py thereof evi-
dence.

SEC. 27. Within twenty days after such conviction, the said magistrate shall cause such certificate to be filed in the office of the clerk of the county in which the conviction shall have been had.

SEC. 28. Every certificate of conviction, made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

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OF CIRCUIT COURT COMMISSIONERS, ATTORNEYS AND OTHER JUDICIAL OFFICERS.

Circuit Court Commissioners.

SECTION 1. A commissioner to perform the duties of a justice of the supreme court at chambers, to be denominated a circuit court commissioner, to reside in each of the counties of this state, shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of four years.

Circuit court commissioners, how appointed.

SEC. 2. No person shall be appointed a circuit court commissioner, unless he be at the time an attorney and counsellor at law of the supreme court.

Must be an attorney and counsellor.

SEC. 3. Every circuit court commissioner, within fifteen days after notice of his appointment, and before he shall enter upon the duties of his office, shall take and subscribe the oath of office prescribed by the constitution of this state, before some judge or clerk of a court of record, and transmit the same to the secretary of state, to be filed in his office.

Oath of office.

SEC. 4. Circuit court commissioners appointed and qualified according to law, shall severally be authorized and required to perform all the duties, and to execute every act, power and trust, which a justice of the supreme court may perform and execute out of court, according to the rules and practice of such court, and pursuant to the provisions of any statute, in all civil cases, except as herein otherwise provided.

General powers and duties.

SEC. 5. But when any power is given in express terms by any statute, to the justices of the supreme court, without naming circuit court commissioners or officers authorized to perform the duties of justices of the supreme court at chambers in such statute, such commissioners shall not be authorized to exercise any such power.

When commissioners not to exercise power.

SEC. 6. No circuit court commissioner shall be authorized to grant any order to stay proceedings before judgment in any cause in which a verdict shall have been rendered; nor any order to stay proceedings on any *capias ad respondendum*.

Not to grant orders to stay proceedings in certain cases.

SEC. 7. When an execution shall have been issued, an order to stay proceedings thereon, granted by a circuit court commissioner, shall not prevent a levy on property by virtue of such execution; but shall only suspend a sale thereon, until the decision of the proper court upon the matter.

Effect of order granted by a circuit court commissioner, to stay proceedings on execution.

SEC. 8. Nor shall any such commissioner grant any order to stay proceedings on any execution against the body of a defendant, unless such defendant shall have executed to the plaintiff, and delivered to such commissioner, a bond for the use of such plaintiff, in a penalty double the amount required to be collected by such execution, with two sufficient sureties, who shall swear that they are each worth the amount of such penalty, over and above all debts; conditioned that such defendant shall be found within the county to which such execution was directed, so as to be arrested upon any execution that may be issued against his body upon the same judgment, within six months from the date of such bond.

Such order not to stay proceedings on execution against body unless bond be executed, &c.

SEC. 9. Such bond shall be filed by the commissioner, in the office of a clerk of the court from which such execution shall have issued,

Bond to be filed with clerk, &c.

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Order to state
giving of bond.

Order made by
supreme court
not to be affected
by order of com-
missioner.

When subse-
quent application
for order not to
be made, and or-
der granted there-
on to be revoked.

Person violating
last section, how
punished.

Commissioner
not to act when
partner interest-
ed.

Supreme court
authorized to
make rules rela-
ting to granting
orders, &c., by
commissioners.

Clerks of su-
preme court.

Where clerks to
reside and keep
office.

Clerks to file
bond and take
oath.

Before whom
oath may be ta-
ken.

within twenty days after the same shall have been taken ; and shall be delivered by such clerk to the person in whose favor the execution was issued, whenever the condition thereof shall be broken.

SEC. 10. In every order to stay proceedings on an execution against the body, the fact of a bond having been given according to law, shall be stated ; and if not so stated, such order shall be void.

SEC. 11. When the supreme court shall have made any order in reference to a matter, such order shall not be suspended, or in any manner affected, by any order granted by a circuit court commissioner.

SEC. 12. If an application for any order be made to any justice of the supreme court, or circuit court commissioner, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application in reference to the same matter, and in the same stage of the proceedings, shall be made to any other circuit court commissioner : and if, upon a subsequent application, any order be made by a circuit court commissioner, it shall be revoked by such commissioner, or by any justice of the supreme court, upon due proof the facts.

SEC. 13. Every person making such subsequent application contrary to the foregoing provisions, with knowledge of any previous application and refusal, shall be liable to be punished by fine and imprisonment by the court in which such matter may be pending.

SEC. 14. No circuit court commissioner having a law partner in whose name the business of the co-partnership shall be carried on, shall be competent to perform any act authorized in this chapter, in any suit or proceeding in which such partner shall be in any wise interested.

SEC. 15. The supreme court shall have power, by general rules, to prescribe any other cases in which circuit court commissioners shall not be authorized to grant any orders in relation to suits, and to prescribe the terms and conditions upon which orders may be granted, in any specified class of cases ; and also by order in any particular case, to forbid the interference of any such commissioner.

Clerks of Courts.

SEC. 16. There shall be four clerks of the supreme court, to be appointed by the justices thereof, who shall severally hold their offices during the pleasure of the court.

SEC. 17. One of the said clerks shall reside and keep his office in the city of Detroit, in the county of Wayne ; one of said clerks shall reside and keep his office in the village of Kalamazoo, in the county of Kalamazoo ; one of said clerks shall reside and keep his office in the village of Jackson, in the county of Jackson ; one of said clerks shall reside and keep his office in the village of Pontiac, in the county of Oakland.

SEC. 18. Each clerk of the supreme court, before entering upon the duties of his office, shall give bond to the people of this state, in such sum, and with [such] sureties as the justices of the supreme court shall direct and approve, conditioned for the faithful discharge of the duties of his office, and deposite the same with the treasurer of this state, and shall take and subscribe the oath of office prescribed in the constitution, and cause the same to be filed in the office of the secretary of state.

SEC. 19. The oath required by the preceding section may be ad-

ministered and certified by any person authorized by law to administer oaths.

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SEC. 20. At each term of the supreme court, it shall be the duty of the clerk residing in the place where the same is held, to attend and officiate as clerk thereof, and to keep accurate minutes of its proceedings under the direction of the court.

Clerk to officiate at each term.

SEC. 21. Each clerk of the supreme court shall have the care and custody of all the records, seals, books and papers appertaining to his said office, and filed or deposited therein; and shall perform all such other duties relating to his office as are required of him by law, or by the rules and practice of the court.

Clerks to have custody of books, seals, &c.

SEC. 22. Each of the clerks of the supreme court shall appoint a suitable person to be his deputy, by writing under his hand and seal, to be filed in his office; and every person so appointed deputy, shall take and subscribe the constitutional oath of office, before any person authorized by law to administer oaths, and cause the same to be filed in the office of such clerk.

Deputy clerks.

SEC. 23. Whenever a clerk of the supreme court shall be absent from his office, or from the place where any official duty is required to be performed by him, or shall be incapable of performing the duties of his office, and whenever his office shall be vacant, his deputy so appointed and qualified may perform the duties of such office, during such absence, inability or vacancy.

When deputy to perform duties of clerk.

SEC. 24. The county clerk of each county shall be the clerk of the circuit court for such county, and shall attend every term thereof, and shall have the care and custody of all the records, seals, books and papers, pertaining to the office of clerk of such court, and filed or deposited therein.

Clerks of circuit courts.

SEC. 25. The clerks of the supreme court, and the clerks of the several circuit courts, shall respectively provide such books for entering proceedings in the courts of which they are such clerks, as the justices or judges thereof shall direct.

Clerks to provide books.

Attorneys, Solicitors and Counsellors.

SEC. 26. No person shall practice as an attorney or counsellor at law, except in the county court, or as a solicitor or counsellor in chancery within this state, unless he shall be approved by the court for his good character and learning, and duly admitted pursuant to the provisions of this chapter.

No person to practice as attorney, &c., unless approved and admitted.

SEC. 27. The supreme court may grant to any citizen of this state of good moral character, and of the age of twenty-one years, a license to practice as an attorney and counsellor at law, upon an examination at a stated term of such court, in the presence of the justices thereof, when satisfied that the applicant possesses sufficient legal learning and ability to discharge the duties of such office.

Supreme court may grant license upon examination, &c.

SEC. 28. Every person hereafter admitted to practice as an attorney and counsellor in the supreme court, shall, at the time of his admission, pay to the clerk the sum of five dollars as an admission fee.

Admission fees.

SEC. 29. All moneys received for admission fees, shall be applied by or under the direction of the justices of the supreme court, in the purchase of a library for the use of the supreme court, to be kept in the city of Detroit.

Moneys received for admission fees, how applied

SEC. 30. Every person admitted to practice as an attorney and coun-

Oath of office.

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Person licensed
in supreme court
may practice in
all courts of law
in this state.

Supreme and
circuit courts
may license at-
torney to prac-
tice as solicitor,
&c.

Tenure of office.

For what causes
attorney, &c.,
may be removed,
or suspended.

Effect of removal
or suspension
by supreme
court.

Party to be notified
to appoint
another attorney,
&c., in certain
cases.

Deceit or collusion
by attorney,
&c., how punished.

Attorney, &c. delaying
suit, &c., liable
in treble damages.

Liability of attorney,
&c., for permitting
process to be made
out in his name.

Attorneys, &c.,
not to buy claims
for purpose of
suing.

seller at law shall take the constitutional oath of office in open court, and subscribe the same in a roll or book to be kept by the clerk for that purpose.

SEC. 31. Every person licensed to practice as an attorney and counsellor in the supreme court, shall be authorized to practice in every court of law in this state.

SEC. 32. The supreme court, and the several circuit courts, may license any attorney and counsellor at law of this state, to practice as a solicitor and counsellor in chancery, under such rules and regulations as he (*they*) shall prescribe,

SEC. 33. Attorneys, solicitors and counsellors may be removed or suspended by the several courts in which they shall be authorized to practice.

SEC. 34. Any attorney, solicitor or counsellor, may be removed or suspended, who shall be guilty of any deceit, mal-practice, crime or misdemeanor; but not until a copy of the charges against him shall have been delivered to him by the clerk or register of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defence.

SEC. 35. The removal or suspension of any attorney, solicitor or counsellor, by the supreme court, shall operate as a removal or suspension in every court in the state; but in every other case, the removal or suspension shall be confined to the court in which it shall be declared.

SEC. 36. When any attorney or solicitor shall die, be removed, or suspended, or cease to act as such, the person for whom he was acting, shall be notified to appoint another attorney or solicitor, at least thirty days before any proceeding shall be had against such person, in the matter wherein such attorney or solicitor was acting for him.

SEC. 37. Any attorney, solicitor or counsellor, who shall be guilty of any deceit or collusion, or shall consent to any deceit or collusion, with intent to deceive the court or any party, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months, or both in the discretion of the court, and shall also be liable to the party injured by such deceit or collusion, in treble the damages sustained, to be recovered in a civil action.

SEC. 38. If any attorney, solicitor or counsellor, shall wilfully delay his client's suit, with a view to his own gain, or shall wilfully receive any money or allowance, for, or on account of any money which he has not laid out or become accountable for, he shall be liable to the party injured in treble damages.

SEC. 39. If any attorney or solicitor shall knowingly permit any person, not being his general law partner or a clerk in his office, to sue out any process, or to prosecute or defend any action in his name, such attorney or solicitor, and every person who shall so use the name of any attorney or solicitor, shall severally be liable to the party against whom such process was sued out, or such action prosecuted and (*or*) defended, in the sum of fifty dollars damages.

SEC. 40. No attorney, solicitor or counsellor, shall, directly, or indirectly, buy, or be in any manner interested in buying, any bond, promissory note, bill of exchange, book debt or other thing in action, with the intent and for the purpose of bringing any suit thereon.

SEC. 41. No attorney, solicitor or counsellor, by himself, or by or

in the name of any other person, shall lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money, or any bond, bill of exchange, draft or other thing in action, to any person, as an inducement to the placing, or in consideration of having placed, in the hands of such attorney, solicitor or counsellor, or in the hands of any other person, any debt, demand, or thing in action, for collection.

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Attorney, &c. not to advance money, &c., for certain purposes.

SEC. 42. Every attorney, solicitor or counsellor, who shall violate either of the two last preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or both, in the discretion of the court; and he shall be removed from office in the several courts in which he is authorized to practice.

Penalty for violating two last sections.

SEC. 43. Nothing contained in either of the three last preceding sections, shall be construed to prohibit the receiving in payment, by any attorney, solicitor or counsellor, any bond, promissory note, bill of exchange, book debt, or any thing in action, for any estate, real or personal, or for services actually rendered, or for a debt antecedently contracted; or from buying or receiving any bill of exchange, draft, or other thing in action, for the purpose of remittance, and without any intent to violate either of the three last preceding sections.

Three preceding sections qualified.

SEC. 44. The defendant in any suit to be brought upon any demand which shall have been bought, sold or received in violation of the foregoing provisions, may give notice with his plea, in addition to any other matter of defence, that on the trial of the cause, he will insist and prove that the demand on which such action is founded, has been bought and sold, or received, for prosecution, contrary to law, without setting forth any other particulars.

Notice by defendant that demand was bought and sold contrary to law.

SEC. 45. On the trial of the cause in which [such] notice shall have been given, if the defendant shall require it, the plaintiff, and his attorney and counsel, and any other person who may be interested in the recovery in such cause, shall be examined on oath touching the matters set forth in such notice.

Defendant may require plaintiff or his attorney to testify.

SEC. 46. The defendant in such suit may cause the persons mentioned in the preceding section, to be summoned as witnesses, to attend the trial; and if the plaintiff, or any other person interested in the recovery in such cause, and duly served with a subpoena for that purpose, shall fail to attend, unless such failure shall be accounted for to the satisfaction of the court; or shall refuse to answer on oath, such questions as shall be pertinent to show a violation of the provisions of this chapter; or if, on such examination, it shall appear that the cause of action on which such suit was founded, has been bought or procured contrary to the true intent of the provisions of this chapter, the plaintiff in such action shall be non-suited,

Defendant may cause plaintiff, &c., to be summoned as witnesses.

SEC. 47. No evidence derived from the examination of any such attorney, solicitor or counsellor, shall be admitted in proof on any criminal prosecution against him, for violating any of the provisions of this chapter.

Evidence not to be admitted in criminal prosecution.

Masters in Chancery.

SEC. 48. There shall be appointed by the governor, by and with the advice and consent of the senate, one master in chancery in each county in this state, and one additional master to every fifteen thou-

Masters in chancery, how appointed, and number in each county.

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Term of office.

Person appointed must be a solicitor and counsellor.

Each master to take oath and give bond.

Penalty of bonds.

When master deemed to have declined appointment.

When circuit judge to direct bond to be prosecuted, &c.

General powers of masters in chancery.

When master may be suspended by circuit judge.

Circuit judge may appoint person to act as master in certain cases.

sand inhabitants therein, according to the census which shall have been last taken; but there shall not be more [than] four masters in chancery appointed for any county.

SEC. 49. Masters in chancery shall hold their offices for the term of four years, unless sooner removed by the governor.

SEC. 50. No person shall be appointed a master in chancery, who shall not be, at the time of his appointment, a solicitor and counsellor in the courts of chancery.

SEC. 51. Each master in chancery, before entering upon the duties of his office, and within thirty days after notice of his appointment, shall take and subscribe the constitutional oath of office, and cause the same to be filed in the office of the secretary of state; and shall also execute a bond to the people of this state, with sufficient surety or sureties, to be approved by the circuit judge of his county, or a register of a court of chancery, and conditioned for the faithful performance of the duties of his office, and cause the same to be filed with a register of said court; and such master shall renew his bond whenever required by the circuit judge of his county.

SEC. 52. The bonds to be executed by the several masters in chancery of each county which shall contain, according to the last census which shall have been taken, a population of thirty thousand or more, shall each be in [the] penal sum of five thousand dollars; and the bonds to be executed by the masters in chancery of every other county shall be in the penal sum of three thousand dollars.

SEC. 53. Every person appointed a master in chancery, who shall neglect for more than thirty days after notice of his appointment, to take the oath of office and file the bond required by this chapter, or to renew any bond, within thirty days after being required so to do by the circuit judge of his county, shall be deemed to have declined the appointment, and the office shall be deemed vacant.

SEC. 54. If any such bond shall become forfeited by a breach of its conditions, the circuit judge of his county shall direct it to be prosecuted, and the moneys recovered shall be applied, under the direction of the court for the indemnity of the persons aggrieved by such breach, in proportion to the amount of their respective losses.

SEC. 55. Masters in chancery shall, within their respective counties, possess all the powers and authority usually exercised by masters and examiners in chancery, according to the practice of that court, and all such other powers as shall be conferred upon them by the court according to law, or by any statute; and shall be amenable to the court for the correct discharge of such duties.

SEC. 56. Any master in chancery may be suspended by the circuit judge of his county from the exercise of the powers and duties of his office, in cases of gross misconduct therein, after due notice and a full opportunity of making a defence shall have been given to him; and the circuit judge of the county shall immediately report such suspension, with the reasons therefor to the governor, to the end that such master may be removed from office by him.

SEC. 57. Whenever there shall be no master in chancery in any county, or if there shall be no master in any county who is not solicitor or counsel, or otherwise interested, or unable to act in any suit or matter, the circuit judge of the county may appoint some suitable person to perform the duties of a master in chancery in all things concerning such suit or matter.

SEC. 58. When the term of office of any master in chancery shall expire while a reference is pending before him, or after he shall have advertised any real or personal property or other thing for sale, under a decree or order of a court of chancery, such court may, by a special order, authorize him to proceed in such reference.

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Court may authorize master to proceed in reference, after his office expires.

SEC. 59. The supreme court shall designate one of the masters in chancery in each circuit, to be an injunction master, who shall have power to grant injunctions within his circuit in the cases provided by law.

One master in each circuit to be designated as an injunction master.

SEC. 60. Such designation shall be in writing, and shall be filed in the office of the clerk of the supreme court of the circuit for which such injunction master shall be designated.

Designation to be in writing and filed with clerk.

SEC. 61. The supreme court may, by general rules, authorize and empower the injunction masters, or any of them, in their respective circuits, to hear and determine all such motions, and to make all such orders in suits and proceedings pending in chancery, as it shall deem proper, and subject to such regulations as it shall prescribe.

Supreme court may authorize injunction master to hear motions, &c.

SEC. 62. For all services rendered by an injunction master under the provisions of the preceding section, and such rules as shall be made by the supreme court in pursuance thereof, he shall receive such fees as shall be prescribed by the supreme court, to be paid by the party requiring such services, and taxed as costs in the suit.

Fees for services.

State Reporter.

SEC. 63. A reporter of the decisions of the supreme court, to be called the state reporter, shall be appointed by the justices of the supreme court, as often as a vacancy shall occur, who shall hold his office during the pleasure of said justices.

State reporter, how appointed. 1844, p. 19.

SEC. 64. The state reporter, before entering upon the duties of his office, and within thirty days after notice of his appointment, shall take and subscribe the constitutional oath of office before one of the justices of the supreme court, and cause the same to be filed in the office of the secretary of state.

Oath of office.

SEC. 65. It shall be the duty of the justices of the supreme court, to prepare and deliver to the reporter, full notes of all decisions made by them in their respective courts, at law and in equity, which they shall deem of sufficient importance to publish.

Justices of supreme court to deliver notes of decisions to reporter.

SEC. 66. The state reporter shall faithfully and truly prepare all such decisions for publication; and when it shall be necessary to a proper understanding of the decision, he shall report therewith a brief statement of the case, and of the arguments of the counsel therein.

Reporter to prepare decisions for publication.

SEC. 67. As often as the decisions of either of said courts, shall be sufficient to constitute a volume of convenient size, it shall be the duty of the reporter to procure to be printed and published, in a neat and substantial manner, and upon the most advantageous terms practicable, an edition of one thousand copies of such reports; and upon the completion of such publication, the auditor general shall draw his warrant upon the state treasurer, in favor of the reporter, for the costs of publication.

Publication of reports.

SEC. 68. Two hundred copies of said reports shall be deposited by the reporter with the secretary of state, to be distributed as follows: two copies to the library of the congress of the United States; one copy to the library of each of the states and territories; one copy to the library of the university of the state; one copy to be kept in

Two hundred copies to be deposited with secretary of state and distributed. 1843, p. 113, § 1.

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Reports may be exchanged for other works, for use of supreme court. 1845, p. 113, § 2.

Residue of reports to be offered for sale, &c.

Reporter may exchange for other reports.

Salary of reporter, &c.

Bond to be filed by reporter before warrant drawn.

the office of the county clerk of each county in this state; two copies to the library for the use of the supreme court; and the remainder of said two hundred copies to be deposited in the state library.

SEC. 69. The secretary of state may exchange any chancery or law reports deposited in the state library in pursuance of the preceding section, after reserving therein at least ten copies of each, for such other reports or other works on law or equity, as the justices of the supreme court shall designate; which reports or other works procured by such exchange, shall be deposited in the library for the use of the supreme court.

SEC. 70. The remaining eight hundred copies of said reports shall be offered for sale by the reporter, at a price not exceeding three dollars and fifty cents for each copy sold to, and for the use of residents of this state, and five dollars for each copy sold to, or for the use of persons residing out of this state.

SEC. 71. The reporter may, in his discretion, exchange any number of copies of said reports, not exceeding five hundred, for the reports of the decisions of courts of other states, and sell the reports received in exchange, if he shall deem it advantageous to do so.

SEC. 72. The state reporter shall receive an annual salary of five hundred dollars, payable quarter yearly, out of any moneys in the state treasury belonging to the general fund, not otherwise specially appropriated by law; and shall also be entitled to all the profits arising from the sale of the reports, after refunding to the state treasury the cost of publishing the same.

SEC. 73. Upon the publication of each and every edition of reports, pursuant to the foregoing provisions, and before any warrant shall be drawn by the auditor general for the cost of such publication, the reporter shall execute and file with the secretary of state, a bond to the people of this state, in the penal sum of five thousand dollars, with sufficient sureties to be approved by the said secretary, conditioned to account to the auditor general for, and to pay over to the state treasurer all such moneys as he shall receive for the state on account of the sale of said reports.

CHAPTER 96.

GENERAL PROVISIONS CONCERNING COURTS, AND THE POWERS AND DUTIES OF CERTAIN JUDICIAL OFFICERS.

Certain powers of courts of record.

SECTION 1. The several courts of this state having a seal, are courts of record, and they shall respectively have power:

1. To issue process of subpoena, requiring the attendance of any witness residing or being in any part of this state, to testify in any matter or cause pending or triable in such courts:

2. To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such courts:

3. To devise and make such new writs and forms of proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

SEC. 2. No process, proceeding or suit, civil or criminal, before any of the said courts, shall be discontinued by the occurrence of any vacancy in the office of any judge, or of all the judges of such court, nor by the issuing of any new commission to any judge or judges of any such court, but the persons appointed in any such new commission shall have power to continue, hear and determine such process, proceeding or suit, as their predecessors might have done if no new commission had been issued.

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Suits, &c. not discontinued by a vacancy.

SEC. 3. No process issued, or suit or proceeding pending in any court of record, shall be discontinued by reason of such court not having been held at any stated terms thereof, or by reason of any term of such court having been altered: but such process shall be deemed returnable at the term which shall be held next after such failure, or at the term established by such alteration, and such suit or proceeding shall be continued to such next term, or to the term established by such alteration, as the case may be.

Proceedings not discontinued by failure or alteration of any term.

SEC. 4. No omission to adjourn any such court from day to day, previous to the final adjournment thereof without day, shall vitiate any proceedings in such court; and the adjournment of any court before the expiration of its term shall not affect the return or service of any writ issued prior or subsequent to such adjournment.

Omission to adjourn, &c., not to vitiate proceedings.

SEC. 5. Whenever the seal of any court shall be so injured that it cannot conveniently be used, the court shall cause the same to be destroyed; and whenever the seal of any court shall be lost or destroyed, such court shall cause a new seal to be made, similar in all respects to the former seal, which shall become the seal of the court.

When court may cause seal to be destroyed, and new seal procured.

SEC. 6. The expense of a new seal for any circuit court, or court of probate, shall be paid by the county in which such courts are held; and the expense of new seals for other courts shall be paid from the state treasury.

Expenses of seals how paid.

SEC. 7. Every court of record shall have power to punish as for a criminal contempt, persons guilty of either of the following acts, and no others:

Powers of courts to punish as for a criminal contempt.

1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority:

2. Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings:

3. Wilful disobedience of any process or order, lawfully issued or made by it:

4. Resistance wilfully offered by any person to the lawful order or process of the court:

5. The contumacious and unlawful refusal of any person to be sworn as a witness; and when so sworn, the like refusal to answer any legal and proper interrogatory:

6. The publication of a false or grossly inaccurate report of its proceeding; but no court can punish as a contempt, the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court.

SEC. 8. Punishment for contempts may be by fine, or by imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty dollars, nor the imprisonment thirty

Punishment for contempts.

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When contempts may be punished summarily, and when party to be notified.

Circumstances of offence to be set forth in warrant, &c.

Construction of preceding sections.

When person may be indicted for contempt &c.

When judges, &c., may appoint another place for holding court.

Appointment, how made and published.

When board of supervisors may appoint place for holding court.

Place appointed to be deemed court house.

Sittings of court to be public.

In what cases judge cannot sit or take part in decision.

Id.

Judge cannot practice in court of which he is judge, unless a party, &c.

Judge not to have partner practicing in his court, or be interested in costs, &c.

days; and when any person shall be committed to prison, for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

SEC. 9. Contempts committed in the immediate view and presence of the court, may be punished summarily; in other cases the party shall be notified of the accusation, and have a reasonable time to make his defence.

SEC. 10: Whenever any person shall be committed for any contempt specified in this chapter, the particular circumstances of his offence shall be set forth in the order or warrant of commitment.

SEC. 11. Nothing contained in the preceding sections, shall be construed to extend to any proceeding against parties or officers, as for a contempt, for the purpose of enforcing any civil right or remedy.

SEC. 12. Persons punished for a contempt under the preceding provisions, shall notwithstanding be liable to indictment for such contempt, if the same be an indictable offence: but the court before which a conviction shall be had on such indictment, shall, in forming its sentence, take into consideration the punishment before inflicted.

SEC. 13. Whenever it shall be deemed unsafe or inexpedient, by reason of war, pestilence, or other public calamity, to hold any court at the time and place appointed therefor, the justices or judges of the court may appoint any other place within the same county, and any other time for holding the same.

SEC. 14. Every such appointment shall be made by an order in writing, signed by the justices or judges making the same, and shall be published by advertisement in such newspaper, or in such other manner as shall be required in the order.

SEC. 15. Whenever there shall be no court house in any county, or the court house shall, for any cause, be unsafe, inconvenient, or unfit for the holding of any court, the board of supervisors for such county may appoint some other convenient building, at, or in the vicinity of, the seat of justice for such county, as a temporary place for holding such court.

SEC. 16. The place so appointed shall be deemed the court house of the county for the time being, for all purposes.

SEC. 17. The sittings of every court within this state shall be public, and every citizen may freely attend the same.

SEC. 18. No judge of any court can sit as such, in any cause in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; nor can any judge decide or take part in the decision of, any question which shall have been argued in the court, when he was not present and sitting therein as a judge.

SEC. 19. No judge of an appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide, or take part in the decision of any cause or matter which shall have been determined by him while sitting as a judge of any other court.

SEC. 20. No judge can practice or act as a counsellor, solicitor or attorney, in the court of which he is a judge, except in those suits in which he shall be a party, or in the subject matter of which he shall be interested.

SEC. 21. No judge shall have any partner practicing in the court of which he is a judge; nor shall any judge be directly or indirectly interested in the costs of any suit that shall be brought in the court of

which he is a judge, except in those suits in which he shall be a party, or be interested.

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SEC. 22. No judge, commissioner, or other judicial officer, shall demand or receive any fees or other compensation for giving his advice in any matter or suit pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or for drafting or preparing any papers or other proceedings relating to any such matter or suit; except in those cases where fees are expressly given by law to such judge or officer, for services performed by him.

In what cases judge, &c., not to receive fees or compensation.

SEC. 23. No court shall be opened or transact any business on the first day of the week, unless it be for the purpose of instructing or discharging a jury, or of receiving a verdict; but this section shall not prevent the exercise of the jurisdiction of any single magistrate, when it shall be necessary in criminal cases, to preserve the peace, or to arrest offenders.

Court not to be opened on first day of week, except for certain purposes.

SEC. 24. All writs, process, proceedings and records in any court within this state, shall be in the English language, (except that the proper and known names of process, and technical words, may be expressed in the language heretofore and now commonly used,) and shall be made out on paper or parchmant, in a fair, legible character, in words at length, and not abbreviated; but such abbreviations as are now commonly used in the English language, may be used, and numbers may be expressed by Arabic figures, or Roman numerals, in the customary manner.

Process, &c., to be in the English language, &c.

SEC. 25. Every person of full age and sound mind, may appear by attorney or solicitor, as the case may require, in every action or plea by or against him, in any court, or may, at his election, prosecute or defend such action or plea, in person; but this provision shall not extend to criminal cases, nor shall any person be permitted to appear on the record in any civil cause in person, whilst he has an attorney or solicitor in such case.

Persons of full age and sound mind may prosecute or defend in person or by attorney, &c.

SEC. 26. All officers of the several courts of record shall be liable to arrest, and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person, such officers shall be liable to arrest, and may be held to bail as other persons, during the sitting of the court of which they are officers; but no attorney, solicitor or counsellor shall be exempt from arrest during the sitting of the court of which he is an officer, unless he shall be employed in some cause pending and then to be heard in such court.

Privilege of officers of courts from arrest during sitting of court.

SEC. 27. No person shall be employed or allowed to appear as counsel, solicitor or attorney, before any court, in any suit which shall have been previously determined before himself, as a judge or justice of the peace.

No person allowed to appear as attorney, &c. in suit previously determined by him as a magistrate.

TITLE XXII.

OF PROCEEDINGS IN PERSONAL ACTIONS.

- Chapter 97. Of the Commencement of Suits, of Process, and the service and return of Original Writs.
- Chapter 98. Of Bail in Civil Actions, and Proceedings connected therewith.
- Chapter 99. Of Pleadings and Set-offs.
- Chapter 100. Of Consolidating and Referring Causes.
- Chapter 101. Of Death, Marriage, or other Disability occurring after the Commencement of the Suit.
- Chapter 102. Of Evidence.
- Chapter 103. Of the Trial of Issues of Fact.
- Chapter 104. Of Amending Pleadings and Proceedings.
- Chapter 105. Of the Assessment of Damages.
- Chapter 106. Of Judgments and executions.
- Chapter 107. Provisions concerning Actions and Proceedings in certain cases.

CHAPTER 97.

OF THE COMMENCEMENT OF SUITS, OF PROCESS, AND THE SERVICE AND RETURN OF ORIGINAL WRITS.

Process from
courts of record,
its style, test, &c.
Const. art. 6, § 7.

SECTION 1. The style of all process from courts of record in this state, shall be "In the name of the people of the state of Michigan;" and such process shall be tested in the name of the chief justice, or presiding justice or judge, or one of the judges of the court from which the same shall issue, be sealed with the seal of the court, and before the delivery thereof to any officer to be executed, shall be subscribed or endorsed with the name of the attorney, solicitor, or other officer by whom the same shall be issued.

Actions for debt
or damages, how
commenced.

SEC. 2. Actions brought for the recovery of any debt, or for damages only, may be commenced, either,

1. By original writ: or,
2. By filing in the office of one of the clerks of the court, a declaration, entering a rule in the minutes kept by such clerk, requiring the defendant to plead to such declaration within twenty days after service of a copy thereof and notice of such rule, and serving a copy of such declaration and notice of such rule personally on the defendant; which mode of commencing an action may be adopted against any person, whether privileged from arrest or not.

On proof of service of copy of
declaration, &c.

SEC. 3. Upon due proof of the service of a copy of a declaration, and notice of rule to plead personally on the defendant, his appear-

ance shall be entered in the same manner as if process had been duly served and returned; and his default may be entered for not pleading, and the same proceedings may be had against such defendant, in all respects, as if he had appeared.

SEC. 4. When a copy of a declaration and notice of rule to plead shall be delivered to any sheriff to serve, it shall be the duty of such sheriff to serve the same, with all convenient speed, and to return the same with his certificate endorsed thereon, of the time and manner of such service, either to the office of the proper clerk of the court in which such suit may be pending, or to the attorney whose name shall be endorsed on the declaration.

SEC. 5. Such certificate of service, signed by the sheriff or his deputy, shall be as effectual to authorize the entry of the defendant's default for not pleading, as if the same had been sworn to by such officer; and the return of any declaration delivered to a sheriff, may be enforced by rule and attachment, in the same manner as the return of a *capias*.

SEC. 6. The original writ in personal actions, shall be a summons or a *capias ad respondendum*, in the form heretofore in use in this state, unless the form thereof shall be altered by rule of court.

SEC. 7. All original writs, and all declarations in cases where suit shall be commenced by declaration, in which the plaintiff is not an inhabitant of this state, shall, before the service thereof, be indorsed by some sufficient person, who is an inhabitant of this state; and if any plaintiff, after the commencement of his suit, shall remove out of the state, he shall, on motion of the defendant, be required to procure such indorser, but no indorsement shall be required when any one of the several plaintiffs is an inhabitant of the state.

SEC. 8. Every such indorser shall be liable to pay all such costs as shall be awarded against the plaintiff, provided the suit therefor be brought against the indorser within one year after final judgment in the original suit.

SEC. 9. The court in which any civil action shall be pending, may, in all cases, when it shall appear reasonable and proper, require the plaintiff to give sufficient security for all such costs as may be awarded against him therein.

SEC. 10. If any indorser of a writ or declaration shall remove out of the state, or be deemed by the court insufficient, such court may require the plaintiff to give new security to the satisfaction of the court, for the payment of all such costs as may be awarded against him in the suit; and every person becoming such surety, shall be liable for all costs from the commencement of the suit, in like manner as if he had been the original indorser.

SEC. 11. Writs of summons shall be served by showing the original writ to the defendant, and delivering to him a copy thereof; and on the return of the writ personally served, the defendant shall be considered in court, and may be proceeded against accordingly.

SEC. 12. Writs of *capias ad respondendum* shall be served by the sheriff, or other officer, by arresting the body of the defendant, and keeping him in his custody until discharged according to law.

SEC. 13. Personal actions arising upon contract, express or implied, may be commenced by *capias ad respondendum* (*respondendum*) only to recover damages for any breach of promise to marry, or for moneys collected by any public officer, or for any misconduct or neglect in

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same proceedings may be had as if defendant had appeared.

Duty of sheriff to serve and return declaration

Sheriff's certificate evidence of service. Return may be enforced.

Original writs.

Indorsement of writs, &c., in case of non-resident plaintiff.

Liability of indorser.

Court may require security for costs in all cases.

When court may require new security.

Writs of summons how served.

Writs of *capias*, how served.

In what cases *capias* may issue on affidavit. 1839, p. 76, § 2.

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office, or in any professional employment, when the plaintiff, or some one in his behalf, shall make and attach to such writ an affidavit, stating therein that the plaintiff has a claim for damages against the defendant for the cause of action stated in the writ, and upon which he believes that the plaintiff is entitled to recover a certain sum, being more than one hundred dollars.

Service of capias on defendant in custody.

SEC. 14. If the defendant in any action commenced by capias ad respondendum, shall be in custody, such writ may be served upon him in like manner, and with the same effect, as if he were at large.

In what cases capias may issue on order of judge, &c.

SEC. 15. Personal actions may be commenced by capias ad respondendum, in cases of claims for damages other than those arising upon contract express or implied, where an order for bail shall be endorsed on the writ by a judge of the court from which the writ issues, or a circuit court commissioner, directing the amount in which bail is to be taken.

Order to be made only on affidavit, &c.

SEC. 16. Such order shall be made only upon the affidavit of the plaintiff or some person in his behalf, showing the nature of the plaintiff's claim, and such affidavit shall be annexed to, and returned and filed with the writ, and the defendant shall be held to bail in the amount specified in such order; and the court into which such writ is returnable may, on motion of either party, diminish or increase the amount for which bail shall be so ordered.

Defendant to be discharged from arrest on executing bond.

SEC. 17. Every defendant arrested upon a capias ad respondendum, shall be entitled to be discharged from such arrest, upon executing to the officer making the same, with the addition of his name of office, a bond, in a penalty equal to the amount specified in the order for bail, or in double the amount specified in the affidavit attached to the writ, as the case may be, with two sufficient sureties, conditioned that such defendant will appear in the action commenced by such writ, by putting in special bail within twenty days after the return day specified in such writ, and by perfecting such bail, if required, according to the rules and practice of the court.

Bail piece to be delivered to sureties.

SEC. 18. The officer taking such bail, shall give to the sureties a bail piece in substance as follows:

County, ss. On this day of one thousand eight hundred and A. B. is bailed by C. D. and E. F. of the county of , upon a capias ad respondendum, returnable in the court, on the day of , at the suit of , in a plea of trespass, (or as the case may be,) which bail piece shall be signed by such officer.

When defendant may be sued by fictitious name.

SEC. 19. When the name of any defendant shall not be known to the plaintiff, the writ may be issued against him by a fictitious name, and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court shall think reasonable.

Judicial rights and privileges of Indians.
1841, p. 137, § 1.

SEC. 20. All Indians shall be capable of suing and being sued, in any of the courts of this state, in like manner, and with the same effect, as other inhabitants thereof, and shall be entitled to the same judicial rights and privileges.

When defendant imprisoned for want of bail, fact to be returned.

SEC. 21. If a defendant arrested on process on which he is required to be held to bail, shall be committed to prison for the want of such bail, the sheriff or other officer making the arrest shall specially return upon such process, the fact that the defendant is imprisoned for want of bail.

SEC. 22. Upon such return being made, the plaintiff shall declare

against the defendant before the end of the term next after such process was returnable, and shall deliver a copy of the said declaration to such prisoner, or to the sheriff or keeper of the jail in whose custody such prisoner shall be; and if such declaration be not served as herein prescribed, the defendant shall be discharged from his imprisonment, and shall be entitled to judgment of discontinuance against the plaintiff.

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Within what time plaintiff to declare when defendant appears.

SEC. 23. When a defendant shall have appeared in any cause, by causing his appearance to be entered, or by putting in and perfecting special bail, where such bail is required; the plaintiff shall declare against such defendant, by the end of the next term after the return of the writ by which such suit was commenced.

If plaintiff fail to declare, judgment of discontinuance may be entered.

SEC. 24. If a plaintiff fail to declare, as in the last section prescribed, judgment of discontinuance may be entered against him, according to the course and practice of the court.

SEC. 25. It shall not be necessary to file any warrant of attorney to authorize any attorney to appear in any court, for either party to an action brought therein, except in cases where it shall be specially required by law: nor shall any entry of any warrant of attorney in any record or other proceeding, be necessary; but the plaintiff in his declaration, and the defendant in his plea, shall state the name of the attorney or attorneys by whom they respectively appear.

Warrant of attorney not necessary, except when specially required by law.

SEC. 26. No return of any such process made to any other office than that required in the last preceding section, shall excuse any sheriff or other officer from the liabilities, fines or proceedings prescribed by law, or by the rules and practice of the supreme court, for a neglect to make a return according to law.

Other returns not to excuse sheriff, &c.

CHAPTER 98.

OF BAIL IN CIVIL ACTIONS, AND PROCEEDINGS CONNECTED THEREWITH.

SECTION 1. In all cases where special bail shall be required to be put in, a recognizance thereof may be taken before any justice of the supreme court, circuit court commissioner, county judge, clerk of any court of record, notary public, or justice of the peace, and shall be filed in the office of a clerk of the court in which the action is pending.

Recognizance of special bail, before whom may be taken.

SEC. 2. The recognizance of special bail shall be, in substance, in the following form, to wit:

Form of recognizance.

_____ Court.

A. B. }
vs. } In trespass, (or as the action may be,).
C. D. }

County, ss: Be it remembered, that on this
day of _____, in the year eighteen hundred and
_____, E. F. and G. H., of the county of _____,
personally appeared before J. K., (describing the officer,) and severally acknowledged themselves to owe A. B., the above named plaintiff, the sum of (the sum for which bail is required) each, to be levied upon their several goods and chattels, lands and tenements, upon con-

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dition that if C. D., the defendant, shall be condemned in this action, at the suit of A. B., the plaintiff, he the said C. D. shall pay the costs and condemnation of the court, or render himself into the custody of the sheriff of the county of _____, (the county in which the defendant was arrested,) for the same, or if he fail so to do, that the said E. F. and G. H. will pay the costs and condemnation for him.

Taken and acknowledged the day } E. F.
and year above written, before me, } G. H.
J. K., Clerk, &c.

Bail piece to be delivered to persons becoming special bail.

SEC. 3. Upon entering into any such recognizance, the persons becoming special bail shall be entitled to a bail piece from the officer taking the recognizance, in substance, as follows, to wit:

— Court.

County, ss: On this _____ day of _____ eighteen hundred and _____, C. D. is delivered to bail on a cessi (*cepi*) corpus, unto E. F. and G. H., of the county of _____, at the suit of A. B., in a plea of trespass, (or as the action may be.) J. K., Clerk, (or Judge, &c.)

Exception to special bail, how taken, &c.

SEC. 4. Exceptions to special bail may be taken by an endorsement to that effect upon the recognizance on file, within twenty days after notice of putting in such bail, and bail shall be perfected within ten days after notice of such exception.

How bail may justify.

SEC. 5. Special bail may justify by affidavit, before any officer authorized to take a recognizance of special bail; and such affidavit shall set forth the township, or city, and county, in this state, in which the bail reside, and that they are severally worth the sum in which the defendant is held to bail, after all their debts are paid.

Proceedings on Bail Bond.

When plaintiff may take assignment of bail bond and sue thereon.

SEC. 6. If special be not put in and perfected within the time limited by law, according to the rules and practice of the court, and the plaintiff be satisfied with the bail taken by the officer serving the writ, he may take an assignment of the bail bond from the officer to whom the bond was given, and may sue thereon in his own name.

Setting aside or staying proceedings on bail bond.

SEC. 7. The proceedings in the suit on the bail bond may be set aside if irregular, or stayed on terms, in order that a trial may be had in the original action.

Terms on which court may stay proceedings on bail bond.

SEC. 8. Where the plaintiff has not lost a trial in the original action by reason of default in not filing and perfecting special bail, the court may stay the proceedings on the bail bond, upon the putting in and perfecting special bail, paying the costs of assigning the bail bond, and of the proceedings thereon, receiving a declaration in the action and pleading issuable to the merits, so that the original cause may be tried at the same time if the plaintiff shall so elect, and if the plaintiff has lost a trial by reason of such default, judgment shall be entered on the bail bond as security.

Proceedings against the Sheriff or other Officer.

Rule on sheriff to put in special bail.

SEC. 9. If special bail shall not be put in and perfected within the time limited therefor, upon filing an affidavit that such bail is not put in and perfected, and that the writ has been returned served, a rule

may be entered with the clerk of the court, in vacation or in term, requiring the sheriff or other officer making the arrest, to put in and perfect special bail within twenty days after service of notice of such rule.

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SEC. 10. If such bail be not put in and perfected within the time specified in such rule, upon filing an affidavit of the service of notice thereof, a rule may be entered with such clerk, in vacation or in term, that an attachment issue against the sheriff, or other officer who may have made the arrest, and such attachment may be issued accordingly.

On filing affidavit of failure to comply with rule, attachment may issue.

SEC. 11. Upon the sheriff or other officer being brought into court on such attachment, for not putting bail to the action, the court may, by summary proceedings, ascertain the amount due to the plaintiff in the action, in the same manner as if interlocutory judgment had been entered against the defendant, and may render a judgment against such sheriff or other officer for the amount so ascertained to be due, with the costs of the suit and proceedings.

Proceedings on officer being brought in on attachment.

SEC. 12. If the court shall determine that the amount so ascertained ought to be paid by such sheriff or other officer, and such sheriff or other officer shall confess a judgment to the plaintiff, for the amount so ascertained, with the costs of suit and the proceedings, the court shall thereupon stay all other proceedings against him, until he shall have had a reasonable time to obtain judgment on the bond taken on the arrest of the defendant, and to collect the amount so ascertained to be due to the plaintiff.

SEC. 13. If, in any such action, after a reasonable time, the sheriff or other officer shall not satisfy the plaintiff in the action the amount due him, with costs and interest, the court shall award execution on the judgment against such sheriff or other officer; and if such execution be returned unsatisfied, in part or in whole, the same proceedings shall be had on the official bond of such sheriff or other officer to collect such deficiency, as in other cases of delinquency.

SEC. 14. The sheriff or other officer who shall have made an arrest, may, for his own indemnity, put in and perfect special bail to the action when such bail shall have been required as herein directed, at any time before judgment rendered against him, on payment of the costs of the proceedings against him; and the putting in of such bail by such officer shall not be deemed a performance of the condition of the bond taken on the arrest; but such officer may, notwithstanding, prosecute such bond, and recover the amount of all damages he may have sustained by the neglect of the defendant to put in such bail.

Officer who made arrest may put in special bail, &c.

Actions against Special Bail.

SEC. 15. No suit shall be commenced upon any recognizance of special bail, until an execution against the body of the defendant, having at least fifteen days between the teste and return thereof, shall have been issued to the sheriff of the county in which such defendant was arrested, and by him returned that the defendant could not be found within his county.

No suit to be commenced against special bail, until execution against defendant returned, &c.

SEC. 16. Upon any such execution being issued and delivered to the sheriff, it shall be his duty to use all reasonable endeavors to execute the same, notwithstanding any directions he may receive from the plaintiff, or his attorney.

Sheriff to endeavor to serve execution, &c.

SEC. 17. If it appear on the trial of any such action against bail,

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When bail entitled to verdict in their favor.

Court may relieve bail on death of principal.

In case of scire facias against bail, no proceeding to be had until writ returned personally served.

Before whom defendant may be surrendered in exoneration of special bail.

Proceedings to effect surrender.

Surrender of defendant on bail bond.

that an execution against the body of the defendant, was not issued as herein directed, or that it was not issued in sufficient time to enable the sheriff to execute the same, or that directions were given by the plaintiff or his attorney, to prevent the service of such execution, or that any other fraudulent or collusive means were used to prevent such service, the bail shall be entitled to a verdict in their favor.

SEC. 18. When the defendant in a suit shall die after the return of the execution against his body, and before the expiration of eight days from the return of the process served on his bail, the court shall relieve such bail on the same terms as if they had surrendered their principal at the time of his death.

SEC. 19. In all cases in which proceedings shall be had against bail, by scire facias, it shall be necessary to serve such writ personally upon the defendant, and to have the same duly returned that it has been so served; and no further proceedings shall be had until such writ shall be so returned.

Surrender of Defendant.

SEC. 20. The special bail of any defendant may surrender him, or such defendant may surrender himself in exoneration of his bail, before any justice of the supreme court, circuit court commissioner, judge of a circuit court, or judge of the county court.

SEC. 21. The proceedings to effect such surrender, shall be as follows:

1. There shall be produced to the officer authorized to accept the same, two copies of the bail piece, upon one of which such officer shall endorse an order that the defendant be committed to the custody of the sheriff, in exoneration of his bail, which shall be delivered to such sheriff, and shall authorize him to commit and detain such defendant, until he shall be duly discharged:

2. Upon producing to such officer the certificate of the sheriff, that the defendant has been committed to, and remains in, his custody, by virtue of such order of commitment, acknowledged before such officer by the sheriff, or proved by a subscribing witness thereto, an order shall be made by such officer, requiring the plaintiff to show cause before him, at such time and place as he shall appoint, why the bail of such defendant should not be exonerated from their liability:

3. Upon producing proof of the due service of such order on the plaintiff or his attorney, such officer shall proceed to hear the allegations and proofs of the parties; and if no good cause to the contrary appear, shall endorse an order on the second copy of the bail piece, briefly reciting the proceedings had before him, and thereby declaring that the bail of such defendant are discharged from all liability as such bail, in the suit in which such bail piece was taken:

4. To such copy of the bail piece shall be attached the certificate of the sheriff herein before required, with the acknowledgment or proof thereof, the order to show cause and the proof of the service thereof; which papers shall be immediately filed in the office of the clerk of the court; and until so filed, the liability of the bail shall continue.

SEC. 22. When a bail bond shall have been taken on the arrest of a defendant, the bail therein may surrender their principal, or he may surrender himself in exoneration of his bail, in the same manner, before the same officers, and with the like effect as provided in the preceding section with respect to special bail.

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OF PLEADINGS AND SET-OFFS.

SECTION 1. When any officer or agent of this state, either by his name, or the name of his office, is or shall be one of the parties to, or shall have executed, or shall hereafter execute any bond, covenant, contract, promise or agreement, in a matter concerning the people of this state, and in which the said people and not such officer or agent, is or shall be the real party in interest, it shall be lawful to maintain an action against the other party to any such bond, covenant, contract, promise or agreement for the breach or non-performance of the same, in the name of the people of this state, in the same manner and with the like effect as if the said people, instead of such officer or agent, had been named as a party to, and had executed such bond, covenant, contract, promise or agreement, but no such action shall be brought, except by the attorney general, on behalf of the people.

When bond, &c., executed by officer or agent of the state, suit may be brought thereon in the name of the people.

SEC. 2. In actions of debt, brought to recover any money, goods or other things received by any person contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration that the defendant is indebted to the plaintiff in the sum so received, or in the value of the goods or other things so received, whereby an action hath accrued to the plaintiff, according to the provisions of such statute, naming the subject matter thereof, in the following form: "according to the provisions of the statute regulating the rate of interest on money," or "according to the provisions of the statute against betting and gaming," as the case may require, or in some other general terms referring to such statute.

Statute how referred to in action of debt on statute.

SEC. 3. If an action of assumpsit be brought for any money received contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration that the same was received contrary to the provisions of such statute, referring to the same, as prescribed in the preceding section.

How to declare in assumpsit on statute.

SEC. 4. If an action of trover be brought for any goods or other things received contrary to the provisions of any statute, the plaintiff shall set forth in his declaration that such goods or other things were converted by the defendant, contrary to the provisions of such statute, referring to the same as prescribed in the preceding sections.

How to declare in trover on statute.

SEC. 5. The assignee for a valuable consideration of any bond, note or other chose in action, which has been or hereafter may be assigned, if the assignor be dead and there be no executor or administrator appointed upon his estate, or if such executor or administrator have no interest in the thing so assigned, or shall refuse to prosecute for the same, may sue and recover in his own name upon such bond, note or other chose in action, and the defendant in all such suits, until due notice of such assignment shall have been given, may set up and avail himself of any defence he may have in such action, in the same manner, and with the like effect as if the assignor had been living, and the action had been prosecuted in his name.

When assignee of chose in action may sue in his own name, &c.

SEC. 6. It shall be lawful for the holder of any bill of exchange or promissory note hereafter to be made, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such

Action against makers, indorsers and acceptors of bill of exchange, &c.

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Plaintiff may declare on money counts, and give note in evidence.

Judgment may be rendered against some of defendants, and in favor of others.

How defendants may set off demands.

When verdict or report to be in favor of defendants generally, and when to specify set-off allowed each defendant.

Rights, &c., of party to bill or note.

When defendant entitled to testimony of co-defendant.

Separate actions may be brought as now authorized.

Pleas in abatement by joint drawer, &c.

No judgment to be rendered against several makers, &c., not served with process, &c.

bill or note, to include all or any of the said parties to the bill or note in one action, and to proceed to judgment and execution in the same manner as though all the defendants were joint contractors.

SEC. 7. The plaintiff in any such action, and in all other actions on bills of exchange or promissory notes, may declare upon the money counts alone; and any such bill or note may be given in evidence under the money counts in all cases where a copy of the bill or note shall have been served with the declaration.

SEC. 8. In any such action judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favor of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default, by pleading or on trial; and when judgment shall be rendered in favor of any defendant, he shall recover costs against the plaintiff, in the same manner as though judgment had been rendered for all the defendants.

SEC. 9. In any such action, any person or persons sued, shall be entitled to set off his or their demands against the plaintiff, in the same manner as though such defendant or defendants had been sued in the form heretofore used.

SEC. 10. If upon the trial of any such action, the whole amount of the demands set off by any or all of the defendants, and allowed by the jury or referees, shall be equal to, or shall exceed the amount of the plaintiff's demand as proved on the trial, the jury or referees shall find a verdict or make a report in favor of the defendants generally; but if the jury or referees shall allow any demand as a set off, and shall still find or report a balance in favor of the plaintiff, they shall state in their verdict, or certify in their report, the amount which they allow to each defendant as a set-off against the plaintiff's demand.

SEC. 11. The rights and responsibilities of the several parties to any such bill or note, as between each other, shall remain the same as they now are by law; saving only the rights of the plaintiff, so far as they shall be determined by the judgment.

SEC. 12. In every suit brought in pursuance of this chapter, any one or more of the defendants shall be entitled to the testimony of any co-defendant as a witness, in all cases where the defendant or defendants calling the witness would have been entitled to his testimony, had the suit been brought in the form heretofore used, and in no other case.

SEC. 13. Nothing in this chapter shall be construed to prevent the holder of any bill or note from bringing separate actions against the parties to any such bill or note, in the manner now authorized by law.

SEC. 14. In any action brought upon a bill of exchange or promissory note pursuant to the provisions of this chapter, any joint drawer, maker, endorser, or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, endorser, or acceptor, in the same manner as if such action had been brought in the form heretofore used.

SEC. 15. No judgment shall be rendered, or record made up against any several drawer, maker, endorser or acceptor, not served with process, or with a copy of the declaration, when the suit is commenced by declaration; but judgment may be obtained against joint contractors, some of whom only have been served with process, or

with a copy of the declaration when the suit is commenced by declaration, and such judgment shall have the same effect against the joint contractors, as if the action had been brought in the form heretofore used.

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SEC. 16. It shall not be necessary for the plaintiff to include in the same record, a judgment against all the parties to such bill or note, but judgment may be entered against any of the parties thereto, whenever the plaintiff would be entitled to the same if the suit had been commenced against such parties only; and if the trial or hearing of such cause be put off by any of the parties to such bill or note, or if a default shall have been obtained against part of the defendants, the plaintiff may proceed to the hearing or trial against the other parties, in the same manner as if the suit had been commenced against the other parties only, and the action shall thereby be severed.

How action may be severed.

SEC. 17. In every suit brought upon a bill or note pursuant to the provisions of this chapter, the plaintiff shall be entitled to the testimony of any defendant as a witness, in cases where the plaintiff would have been entitled to his testimony against the other parties to such bill or note, had the suit been brought in the form heretofore used.

In what cases plaintiff entitled to testimony of a defendant.

SEC. 18. One or more of the defendants in any suit brought upon a bill or note pursuant to this chapter, may move for judgment as in case of non-suit, although the other defendants shall not unite in the motion; but one of several joint makers, drawers, endorsers or acceptors, shall not make such motion, unless the other joint contractors with him shall unite in the motion.

One or more of defendants may move for judgment, &c.

SEC. 19. When any demurrer shall be entered in any action, and issue be joined thereon, the court shall proceed and give judgment according as the very right of the case and matter in law shall appear, without regarding any defect or other imperfection in any process or pleading, so as sufficient matter appear in the pleadings, to enable the court to give judgment according to the very right of the case, unless such defect or other imperfection be specially expressed in the demurrer.

Judgment upon demurrer.

SEC. 20. After issue shall be joined on any demurrer, the court shall amend every such defect or other imperfection in any process or pleading, in the last section mentioned, other than those which the party demurring shall specially express in his demurrer.

What defects to be amended by court after issue on demurrer.

SEC. 21. No plea in abatement, or other dilatory plea, which does not involve the merits of the action, shall be received by any court, unless the party offering such plea shall prove the truth thereof by affidavit or by some other evidence.

Plea in abatement not to be received without proof of its truth.

SEC. 22. No special plea in bar shall be pleaded in any civil action hereafter to be commenced; but all matters of defence to any such action, may be given in evidence under the general issue.

No special plea in bar to be pleaded.

SEC. 23. In all civil actions hereafter to be commenced, the general issue shall consist of a demand by the defendant, of a trial of the matters set forth in the plaintiff's declaration.

What general issue to consist of.

SEC. 24. To entitle a defendant to avail himself of any matter of defence, which, according to the practice as it has heretofore existed, was required to be pleaded specially, or of which a special notice was required to be given under the general issue or other general plea, such defendant shall annex to his plea of the general issue, a notice to the plaintiff, briefly stating the precise nature of such matter of defence.

Notice of special matter of defence.

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Rules in regard to notice may be made by supreme court.

In what cases and under what circumstances demands may be set off.

SEC. 25. The supreme court may make such rules in relation to notice of matters intended to be given in evidence by either party, as shall be necessary to prevent surprise, and to afford opportunity for preparation for trial.

SEC. 26. In the following cases, and under the following circumstances, a defendant may set off demands which he has against the plaintiff :

1. It must be a demand arising upon judgment, or upon contract express or implied, whether such contract be written or unwritten, sealed or without seal ; and if it be founded upon a bond, or other contract having a penalty, the sum equitably due, by virtue of its condition, only, shall be set off :

2. It must be a demand for real estate sold, or for personal property sold, or for money paid, or money had and received, or services done ; or if it be not such a demand, the amount must be liquidated, or be capable of being ascertained by calculation :

3. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee or owner of the demand :

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant :

5. It can be allowed only in actions founded upon demands which could themselves be [the] subject of set-off according to law :

6. If there be several defendants, the demand set off must be due to all of them jointly, except where other provision is expressly made by law :

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff having no real interest in the contract upon which the suit is founded ; in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified :

8. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange, which has been assigned by the plaintiff, a demand existing against such plaintiff, or any assignee of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such plaintiff or such assignee, while the contract belonged to him :

9. If the action be upon a negotiable promissory note, or bill of exchange, which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt, may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill, after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him :

10. If the plaintiff be a trustee for another, or if the suit be in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

SEC. 27. To entitle a defendant to a set-off, he must annex a notice thereof to his plea of the general issue.

Notice of set-off.

SEC. 28. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

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When plaintiff to take nothing by his action, and when to have judgment for residue.

SEC. 29. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, when the contract, which was the subject of the suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

When judgment for defendant, &c.

SEC. 30. In suits brought by executors and administrators, demands existing against their testators or intestates, and belonging to the defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

Set-offs in suits by executors, &c.

SEC. 31. When a set-off is established in a suit brought by executors or administrators, and a balance found due the defendant, the judgment shall be against them in their representative character, and shall be evidence of a debt established, to be paid in the course of administration.

Judgment against executors &c., evidence of debt established.

CHAPTER 100.

OF CONSOLIDATING AND REFERRING CAUSES.

SECTION 1. Whenever several suits shall be pending in the same court, by the same plaintiff against the same defendant, for causes of action which may be joined, the court in which the same shall be prosecuted may, in its discretion, if it shall appear expedient, order the several suits to be consolidated into one action.

When court may order several suits to be consolidated into one.
9 Wend., 451.

SEC. 2. When several suits shall be commenced against joint and several debtors, in the same court, the plaintiff may, in any stage of the proceedings, consolidate them into one action.

Plaintiff may consolidate several suits against joint and several debtors.

SEC. 3. When a cause shall be at issue in any court of record, and it shall appear that the trial of the same will require the examination of a long account, on either side, the court may, upon the consent of both parties in writing, signed by them or their attorneys, and filed with the clerk, order such cause to be referred to three impartial and competent persons.

When court may order cause to be referred.

SEC. 4. If the parties agree on three persons as referees, such persons shall be appointed by the court; if they disagree, each party shall be entitled to name one, and the court shall appoint the persons so nominated, if they are free from all exceptions, and such other person as the court shall designate.

Referees, how selected, &c.
7 Wend., 483.

SEC. 5. The referees appointed pursuant to the foregoing provisions, shall proceed with diligence to hear and determine the matters in controversy.

Referees to proceed with diligence.

SEC. 6. They shall appoint a time and place for the hearing, and shall adjourn the same from time to time as may be necessary; and on the application of either party, and for good cause they may post-

Time, &c., of hearing; adjournments.
1 Wend., 04.
6 do. 352.

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7 do. 534.
12 do. 199.
Referees to be
first sworn.

Witnesses may
be compelled to
attend.

Oath to witness-
es. All the refer-
ees must meet
and hear proofs,
but majority may
report.

Referees may be
compelled to re-
port, and may be
required to re-
port proceedings,
&c.
12 Wend., 291.

Entry upon the
record, and judg-
ment on report.
7 Wend., 178.

When court may
appoint auditors.
6 Pick., 193.
11 do. 359.

Auditors to be
sworn, and to
give notice of
meeting, &c.

All the auditors
must meet, but
report of majori-
ty valid, &c.

Witnesses may
be compelled to
attend, &c.

Court may dis-
charge auditors
and recommit
report.
4 Pick., 283.

Report may be
used as evidence
on trial.

pone such hearing to a time not extending beyond the next term of the court in which the suit is pending.

SEC. 7. Before proceeding to hear any testimony in the cause, the referees shall be severally sworn, faithfully and fairly to hear and examine the cause, and to make a just and true report according to the best of their understanding, which oath may be administered by any judge, clerk of a court of record, justice of the peace, or notary public.

SEC. 8. Witnesses may be compelled to appear before such referees, by subpoenas issuing out of the court in which the cause is pending, in the same manner, and with the like effect, as in cases of trials in such court.

SEC. 9. Any one of the referees may administer the necessary oath to the witnesses produced before them for examination. All the referees must meet together and hear all the proofs and allegations of the parties, but a report by any two of them shall be valid.

SEC. 10. The referees may be compelled, by the order of the court in which the cause is pending, to proceed to the hearing thereof, and to make report of the amount they find due to either party; and the court may require them to report their decision in admitting or rejecting any witness, in allowing or overruling any question to a witness, or the answer thereto, and all other proceedings by them, together with the testimony before them, and their reasons for allowing or disallowing any claim of either party.

SEC. 11. An entry of such reference shall be made upon the record, and day shall be given to the parties from time to time, until the referees report, or they be thereof discharged. If the report of the referees be confirmed by the court, judgment shall be entered thereon, in the same manner, and with the like effect, as upon the verdict of a jury.

SEC. 12. Whenever a cause is at issue, and it shall appear that the trial will require the investigation of accounts, or the examination of vouchers, the court in which such issue is to be tried, may appoint one or more auditors to hear the parties, and examine their vouchers and evidence, and to state the account and make report thereof to such court.

SEC. 13. Before proceeding to hear any evidence in the cause, the auditors shall be severally sworn, in the same manner as referees are herein required to be sworn, and they shall in like manner give notice to the parties of the time and place appointed for their meeting, and they may adjourn from time to time, as may be necessary.

SEC. 14. All the auditors must meet and hear the cause, but a report of a majority of them shall be valid, and such report may be compelled by the court in like manner as in the case of referees.

SEC. 15. Witnesses may be summoned and compelled to attend and testify before the auditors, in the same manner as before referees; and either of the auditors may administer the necessary oath to such witnesses.

SEC. 16. The court may, for any sufficient reason, discharge the auditors and appoint others, and they may also re-commit the report for revision or further examinations (*examination*) to the same, or to other auditors.

SEC. 17. The report of the auditors, if there be no legal objection to it, may be used by either party as evidence on the trial before the

jury, but it may be impeached and disproved by other evidence produced on the trial by either party.

SEC. 18. The court shall award a reasonable compensation to the auditors or referees, as the case may be, which shall be paid by the plaintiff, and shall be taxed in his bill of costs, if he shall be entitled to costs in the suit.

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Compensation of
auditors and referees.

CHAPTER 101.

OF DEATH, MARRIAGE, OR OTHER DISABILITY OCCURRING AFTER THE COMMENCEMENT OF THE SUIT.

SECTION 1. In all personal actions, the cause of which does by law survive, if there is only one plaintiff, or one defendant, and the sole plaintiff or defendant shall die after the commencement of the action, and before the final judgment, the action may proceed and be prosecuted by or against the surviving party, and by or against the executor or administrator of the deceased party, in the manner provided in this chapter.

If sole plaintiff or defendant in personal action die, suit may be prosecuted by or against executor, &c.
4 N. Hamp. R., 385.

SEC. 2. The death of the party shall be suggested on the record, and his executor or administrator may thereupon appear and take upon himself the prosecution or defence of the suit, as the case may be; and it shall be thenceforth conducted in the same manner as if it had been originally commenced by or against the same executor or administrator.

Suggestion on record, and conducting of suit, &c.

SEC. 3. If the executor or administrator does not voluntarily appear on or before the first day of the next term after the death of such party, the surviving party may have an order of course, that the executor or administrator appear and take upon himself the prosecution or defence of the suit, within thirty days after service of notice of such order.

Order for appearance of executor or administrator.

SEC. 4. If the executor or administrator shall not appear within the time limited by such order, or within such further time as the court shall allow for that purpose, he shall be non-suited or defaulted, and judgment shall be rendered against him in his representative capacity, and shall be evidence of a debt established to be paid in the course of administration.

If executor, &c., do not appear, judgment to be rendered against him.

SEC. 5. In addition to the actions which survive by the common law, the following shall also survive, that is to say: actions of replevin and trover, actions for assault and battery, or false imprisonment, or for goods taken and carried away, and actions for damage done to real or personal estate.

What actions survive.
8 Greenl., 128.
3 Mass., 222.
4 do. 480.

SEC. 6. When any action mentioned in the preceding section, shall be prosecuted to judgment against the executor or administrator, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

When plaintiff entitled to recover only the actual damages sustained, &c.
4 Pick., 218.

SEC. 7. When the executor or administrator of a trustee, carrier or other person who claimed only a special property in any goods, to hold them for the use and benefit of another, shall recover such

When goods, &c., recovered by executor, &c., not assets.

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Goods returned by executor, &c. pursuant to a judgment, not to be considered assets.

When suit to proceed in favor of or against surviving plaintiff or defendant.
7 Greenl., 421.
7 Pick., 62.

When action to be prosecuted by or against executor, &c. of last surviving plaintiff or defendant.
9 Pick., 532.

If demandant in real or mixed action, die, his heir or executor, &c. may prosecute.

In case of the death of one of several demandants, his heir, &c. may be admitted.
10 Mass., 180.
11 do 56.

When surviving demandants may prosecute suit.

When suit may be prosecuted against surviving defendants in real or mixed action.
2 Pick., 23.
2 Mass., 480.

Same proceedings to be had in actions, &c., for partition.
2 Mass., 479.
10 do 5.

When interest of deceased plaintiff in partition passes to person not a party, such person may be made defendant, &c.

goods, or the value thereof, or damages for the taking or detention thereof, or for any injury done to the same, the goods or money so recovered shall not be considered assets in his hands, but shall, after deducting the costs and expenses of the suit, be paid over and delivered to the person for whose use or benefit they were so claimed or held by the deceased person.

SEC. 8. When judgment for a return, in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered assets in his hands; and if they shall have been included in the inventory, it shall be a sufficient discharge for the executor or administrator, to show that they have been returned in pursuance of such judgment.

SEC. 9. When there are several plaintiffs or defendants in any personal action, the cause of which survives, either by the common law, or by the provisions of this chapter, and any of them shall die before final judgment, the action shall proceed at the suit of the surviving plaintiff or against the surviving defendant as the case may be.

SEC. 10. If, in such case, all the plaintiffs or all the defendants shall die before final judgment, the action may be prosecuted or defended by or against the executor or administrator of the last surviving plaintiff or defendant, respectively, in the same manner as if such last survivor had originally been the only plaintiff or defendant.

SEC. 11. In all real and mixed actions, if the demandant shall die before final judgment, his heir, within such time as the court shall allow, may appear and prosecute the suit, in the same manner as if the action had been originally commenced by him, or the action may be prosecuted by the executor or administrator for the benefit of the heir, or of the creditors of the deceased.

SEC. 12. If there are several demandants in such action, and any of them shall die before final judgment, the heir, executor or administrator of the deceased party may be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had joined with them in commencing the suit.

SEC. 13. If the interest of the deceased party passes to the surviving demandants, or if there be no motion for the admission of another person as heir, executor or administrator, within the time allowed by the court for that purpose, the surviving demandants may prosecute the suit for so much of the premises in question as may be claimed by them.

SEC. 14. When there are several defendants in any real or mixed action, and any of them shall die before final judgment, the action may be prosecuted against the surviving defendants, for so much of the premises as they shall hold or claim.

SEC. 15. The same proceedings as are prescribed in the preceding sections, in relation to real and mixed actions, shall be had in all partitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the two following sections.

SEC. 16. If upon the death of either of several plaintiffs or petitioners, in a suit for partition, the interest of the deceased party shall pass to the surviving plaintiffs or petitioners, or to any person who shall be admitted to join them in the suit, it shall be prosecuted accordingly, in the manner before provided respecting real actions, but if the interest of the deceased party shall pass to any person who is

not so admitted as a plaintiff or petitioner, such person may by, order of the court, be made a defendant or respondent, and the same proceedings may be had against him, as would have been necessary to make him an original defendant or respondent.

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SEC. 17. If upon the death of either of several defendants or respondents, the interest of the deceased party shall pass to the surviving defendants or respondents, the suit may proceed against them without any new process, but if the interest of the deceased party shall pass to any other person, such person may be made a defendant or respondent, by order of the court, in the manner prescribed in the preceding section.

When suit to proceed against surviving defendants without new process.

SEC. 18. When any action is brought by an unmarried woman, either alone or jointly with others, and she shall be married before final judgment, her husband may, on his own motion, be admitted as a party to prosecute the suit with her, and with the other plaintiffs, if there be any, in like manner as if he had originally joined in the suit.

When husband may be admitted to prosecute with wife, suit commenced by her when unmarried.
14 Mass., 295.
11 do., 342.

SEC. 19. If a female defendant marry at any time before final judgment, her husband may, on his own application, or on the application of the plaintiff, be made a co-defendant in the suit; but if such husband be made a defendant on the application of the plaintiff, he shall have the same right to contest the fact of his marriage, as if the suit had been originally brought against him as husband of such female defendant.

When husband may be made co-defendant in suit commenced against wife before marriage.

SEC. 20. When an action is authorized or directed by law, to be brought by or in the name of a public officer, or by any trustee appointed by virtue of any statute, his death or removal shall not abate the suit, but the same may be continued by his successor, who shall be substituted for that purpose by the court, and a suggestion of such substitution shall be entered on the record.

Death of public officer not to abate suit, &c.

SEC. 21. If, during the pendency of any action, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian to prosecute or defend the suit as the case may require.

When party becomes insane, suit may be prosecuted or defended by guardian.
13 Mass., 412.
5 Pick., 431.

SEC. 22. In all actions of replevin, or in attachment, when the sole plaintiff shall die during the pendency of the suit, it shall be sufficient for the defendant or defendants, as the case may be, to notify the surety or sureties in the replevin or attachment bond to appear and prosecute the suit, and if he or they shall fail so to do within such time as the court shall direct, then his or their appearance may be entered by the defendant or defendants, and thereupon the cause shall be proceeded in to judgment and execution, in like manner and with like effect as though the same had been originally commenced in the name of such surety or sureties.

Proceedings in case of death of sole plaintiff, in replevin, &c.

SEC. 23. In all cases provided for in this chapter, when any change of parties in the suit shall happen after its commencement, the court may allow amendments of the declaration and other proceedings, and such suggestions to be entered on the record, as the circumstances of the case shall require.

Amendments, &c., on change of parties.

Of taking Testimony Conditionally, within this State.

When depositions may be taken.

SECTION 1. Whenever any action pending in any court of law, being a court of record, shall have been commenced by the actual service of process or declaration, or where the defendant shall have appeared in the action, either party may have the testimony of any witness taken conditionally, to be used in the cases and under the circumstances hereinafter prescribed.

Affidavit to be made; its contents.

SEC. 2. The party desiring the examination of a witness, may apply to any judge of a court of record, or circuit court commissioner, upon an affidavit which shall state,

1. The nature of the action, and the plaintiff's demand :

2. If the application be made by the defendant, the nature of his defence :

3. The name and residence of the witness :

4. That the testimony of such witness is material and necessary for the party making such application, in the prosecution or defence of such suit, as the case may be : and,

5. That the witness is about to depart from this state, or that he is so sick, aged or infirm, as to afford reasonable grounds for apprehension that he will not be able to attend the trial of such suit.

Order for examining witness.

SEC. 3. If the officer to whom such application is made, shall be satisfied that the circumstances of the case require the examination of such witness, in order to attain justice between the parties, he shall make an order requiring the adverse party to appear before him, and attend the examination of such witness, at such time and place as shall be therein specified ; which time shall not exceed twenty days from the date of such order, and shall be as much shorter as the exigency of the case may require, and the residence of the adverse party, or his attorney will allow, in order to afford sufficient opportunity to attend such examination.

When application to be dismissed.

SEC. 4. The adverse party may show cause against proceeding on (in) such examination, by proof that such witness is not about to depart from this state, or that he is not sick, aged or infirm, or that the application for his examination is made collusively, to avoid his being examined on the trial of the cause ; and upon any such cause being shown, the officer shall dismiss such application.

Deposition.

SEC. 5. If no sufficient cause be shown, upon due proof of service of such order, and a copy of the affidavit upon which the same was founded, the officer granting the same shall proceed to the examination of such witness, and shall take his deposition, in which deposition shall be inserted any answer or declaration of such witness, which either of the parties shall require to be included therein.

To be signed and filed.

SEC. 6. Such deposition shall be carefully read to and subscribed by such witness, shall be certified by the officer taking the same, and within ten days thereafter, shall be filed with the clerk of the court in which such action shall be pending.

When deposition to be read in evidence.
7 Wend., 26.

SEC. 7. Such deposition, or a certified copy thereof, may be given in evidence by either party, on the trial of the cause, or upon the assessment of damages therein by the clerk or a jury, or by virtue of

any writ of inquiry of damages after it shall have been satisfactorily proved that such witness is unable to attend such trial or assessment of damages personally, by reason of his death, insanity, sickness or settled infirmity, or that he has continued absent out of this state, so that his attendance at such trial or assessment could not be compelled by the ordinary process of law.

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SEC. 8. But the party against whom such deposition is to be used, may prevent the reading thereof, by satisfactory proof that sufficient notice was not given to enable him to attend the examination of such witness, or that such examination was not in all respects fair, and conducted as herein prescribed.

How reading may be prevented.

SEC. 9. Such deposition shall have the same effect, and no other, as the oral testimony of the witness would have if given on such trial or assessment, and every objection to the competency or credibility of such witness, and to the competency or relevancy (*relevancy*) of any question put to him, or of any answer given by him, may be made in the same manner as if such witness were personally examined on such trial or assessment.

Effect of deposition.

SEC. 10. The officer granting such order, upon the application of the party desiring the examination of a witness, may compel the attendance of such witness by issuing a summons for that purpose, and enforcing the same in the manner prescribed in this chapter.

Witness how compelled to attend.

Of taking the testimony of certain Witnesses to prove Wills.

SEC. 11. Whenever all or any of the subscribing witnesses to any will heretofore executed, or hereafter to be executed, shall reside within this state, and out of the county of (*to*) the judge of probate to (*of*) which exclusive power is given to take the proof of such will, and cannot, by reason of infirmity or sickness attend before such judge of probate to prove such will, the testimony of such witness may be taken in the manner hereinafter prescribed.

Taking testimony of witness out of county to prove will.

SEC. 12. Any person interested in the proof of such will, may, on the day specified in the notice required by law, on which the proof of any such will is to be taken, present to such judge of probate an affidavit, stating the names and residence of the subscribing witness or witnesses to such will, whose attendance cannot be procured before such judge of probate, by reason of infirmity or sickness, accompanied by the affidavit of some disinterested person, of the sickness or infirmity of such witness or witnesses.

Who may apply: affidavits.

SEC. 13. If such judge of probate shall be satisfied that any such witness is so sick or infirm, that it is not probable his attendance could be procured within a reasonable time before such judge, he shall make an order directing the testimony of such witness to be taken before the judge of probate of the county in which the witness resides, at such time, and at such place, within such county, as shall be specified in such order, and may annex the will to such order; and notice of such examination shall be given to all persons interested, in such manner as shall be specified in such order.

Order to take testimony before another judge of probate.

SEC. 14. The judge of probate before whom such testimony shall be directed to be taken, shall have power to take the same, and may issue subpoenas under his seal of office to compel the attendance of such witness, and enforce obedience thereto, and may adjourn the taking of such testimony, if necessary, from the day and place appointed in said order, to such other day, and such other place in such

Authority of such judge.

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Testimony, how
authenticated,
&c.

To be filed; evi-
dence.

Fees for taking
testimony.

county, as he shall appoint; but such judge shall not take such testimony until it be proved to his satisfaction, that notice of the examination has been given as directed in the order.

SEC. 15. The testimony so taken shall be reduced to writing by such judge of probate, and be carefully read to, and subscribed by such witness; and when so subscribed, shall be certified by such judge, under his hand and seal of office, and forthwith transmitted to the judge of probate who made the order for taking the same.

SEC. 16. Such testimony so certified, shall be filed by the judge of probate authorized to take the proof of such will, and shall be received by him as evidence on proving the same, subject to all legal objection.

SEC. 17. The judge of probate taking such testimony, shall be entitled to the like fees therefor, as for similar services in causes pending before him, to be paid by the person requiring such testimony to be taken, and to be allowed by the judge of probate taking the proof of such will, in the same manner as if such testimony had been taken before him.

Of taking the Testimony of Witnesses out of this State.

When commis-
sion to issue, &c.
7 Wend., 513.
7 do. 520.
9 do. 444.

May be ordered
by justice of su-
preme court, &c.

Order to be filed,
subject to con-
trol of court.

Who to settle in-
terrogatories.

To be annexed
to commission.

SEC. 18. Whenever any action shall be pending in a court of law, being a court of record, and an issue of fact shall have been joined therein, and it shall appear on the application of either party, that any witness not residing within this state, is material to the prosecution or defence of such action, the court may, upon such terms as it shall think proper, award a commission to one or more competent persons, authorizing them, or any of them, to examine such witness on oath, upon the interrogatories annexed to such commission; to take and certify the deposition of such witness; and to return the same according to the direction given with such commission, and upon the written consent of the parties to such action, or their attorneys, being filed in the clerk's office, the clerk of such court may issue such commission without other authority.

SEC. 19. If such action be pending in any court of record, any justice or judge of such court, or circuit court commissioner may, either in term or vacation, grant an order that such commission issue, upon proof that due notice of application for such order has been served on the adverse party, at least ten days before the making of such application.

SEC. 20. Such order shall be filed in the office of the clerk of the court in which the action is pending, and shall be granted only in the like cases, and upon the same terms that such court would award such commission, and shall be subject to the control of such court in all respects.

SEC. 21. The interrogatories to be annexed to such commission, shall be settled by a justice of the supreme court, or by a judge of the county court at chambers, or by a circuit court commissioner, and upon such notice as shall be established by the practice of the court; and the endorsement upon any such interrogatories by the parties to the suit, or their attorneys, of their consent thereto, shall be equivalent to the settlement and allowance of such interrogatories by a judge.

SEC. 22. In settling such interrogatories, either party shall be allowed to insert any question pertinent to the cause which he shall pro-

pose, and the officer settling the same shall endorse his allowance thereof, and annex them to the commission.

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SEC. 23. Upon the commission, the officer settling the interrogatories shall direct the manner in which it shall be returned, and may, in his discretion, direct the same to be returned by mail, addressed to the clerk of the court out of which it shall issue.

Directions on
commission.

SEC. 24. The persons to whom such commission shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows :

How commission
to be executed.

6 Wend., 475.

1. They or any one of them shall publicly administer an oath to the witnesses named in the commission, that the answers given by them to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth :

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same :

3. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the commissioners :

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them ; they shall annex all the depositions and exhibits to the commission, upon which their return shall be endorsed ; and they shall close them up under their seals, and address the same when so closed, to the clerk of the court from which the commission issued, as shall have been directed on the commission, at his place of residence :

5. If there shall be a direction on the commission to return the same by mail, they shall immediately deposite the packet so directed, in the nearest post office :

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to such agent.

SEC. 25. If such packet be delivered to an agent, he shall deliver the same to the clerk to whom it shall be directed, or to one of the judges of the court in which the action is pending, who shall receive and open the same, upon such agent making affidavit that he received the same from the hands of one of the commissioners, and that it has not been opened or altered since he so received it.

Return by agent.

SEC. 26. If such agent be dead, or from sickness or other casualty, (*casualty*,) unable to deliver such packet personally, as in the last section directed, the same may be received by the clerk or judge from the hands of any other person, upon such person making affidavit that he received the same from such agent ; that such agent is dead or otherwise unable to deliver the same ; that it has not been opened or altered since such person received it ; and that he believes the same has not been opened or altered since it came from the hands of the commissioners.

If agent be sick
or dead, &c.

SEC. 27. The clerk or judge receiving and opening such commission and return, shall immediately file the same in the office of the clerk of the court from which it issued.

Filing commis-
sion and return.

SEC. 28. If the packet containing such commission and return be transmitted by mail, the clerk to whom the same shall be addressed, shall receive the same from the post office, and open and file it in his office.

Return by mail.

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Parties may
agree on mode
of return.

SEC. 29. The parties, or their attorneys may, in writing, agree on the manner in which a commission for the examination of witnesses may be returned; and on filing such agreement with the clerk of the court, the attorney for the party suing out the same, may endorse thereon a direction according to such agreement; and such commission shall be returned accordingly.

Return, &c.,
where to be kept.

SEC. 30. The commission, returns, depositions, and exhibits thereto annexed, shall remain on file in the office of the clerk to whom the same were addressed, unless the court, by a special order, shall direct them to be filed with some other clerk; and they shall at all times be open to the inspection of the parties, who shall be entitled to copies of the same, or of such parts thereof as they may desire, on payment of the fees allowed by law.

Deposition, &c.,
evidence.

SEC. 31. The examinations and depositions taken under a commission issued, executed and returned, as herein directed, or a certified copy thereof when the originals are filed in any other county than that in which the cause shall be tried, may be offered and used in evidence on the trial of the cause, by either party; and every objection to the competency or credibility of a witness so examined, or to the competency or relevancy of any question put to him, may be made in the same manner, and with the like effect, as if such witness were personally examined at such trial.

Commissions to
issue after inter-
locutory judg-
ment.

SEC. 32. If an interlocutory judgment shall have been obtained in any action, a commission may be awarded on the application of the plaintiff in the like cases, and in the same manner, as if an issue of fact had been joined; and the depositions thereon may be used in evidence on any proceeding to assess the plaintiff's damages, with the like effect as herein provided in case of a trial; and in case such interlocutory judgment shall be set aside, and a trial be had, then such deposition may be had in evidence upon such trial.

Of Affidavits taken, and other Judicial Proceedings had in other States and Foreign Countries.

Authentication of
affidavits in other
states, &c.

SEC. 33. In cases where by law the affidavit of any person residing in another state of the United States, or in any foreign country, is required, or may be received in judicial proceedings in this state, to entitle the same to be read, it must be authenticated as follows:

12 Wend., 225.

1. It must be certified by some judge of a court having a seal, to have been taken and subscribed before him, specifying the time and place where taken:

2. The genuineness of the signature of such judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof: or,

3. If such affidavit be taken in any other of the United States, or any territory thereof, it may be taken before a commissioner duly appointed and commissioned by the governor of this state to take affidavits to be used therein.

Records, &c., of
foreign courts

SEC. 34. The records and judicial proceedings of any court in a foreign country, shall be admitted in evidence in the courts of this state, upon being authenticated as follows:

1. By the attestation of the clerk of such court, with the seal of such court annexed, or of the officer in whose custody such records are legally kept, with the seal of his office annexed:

2. By a certificate of the chief justice or presiding magistrate of

such court, that the person attesting such record is the clerk of the court, or that he is the officer in whose custody such record is required by law to be kept; and in either case, that the signature of such person is genuine: and,

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3. By the certificate of the officer of the government under whose authority such court is held, having the custody of the great or principal seal of such government, purporting that such court is duly constituted, specifying generally the nature of its jurisdiction, verifying the seal of the court, or of the officer having the custody of such record, and the signature of the chief justice or presiding magistrate.

SEC. 35. Copies of such records and proceedings, in the courts of a foreign country, may also be admitted in evidence upon due proof, Copies thereof.

1. That the copy offered has been compared by the witness with the original, and is an exact copy of the whole of such original:

2. That such original was in the custody of the clerk of the court, or other officer legally having charge of the same: and,

3. That such copy is duly attested by a seal, which shall be proved to be the seal of the court in which such record or proceeding shall be.

SEC. 36. The preceding sections shall not prevent the proof of any record or judicial proceeding of the courts of any foreign country, according to the rules of the common law, in any other manner than that herein directed, nor shall they be construed as declaring the effect of any record or judicial proceeding, authenticated as therein prescribed. Construction of preceding sections.
(See act of congress of 26th May, 1790, and 27th March, 1804.)

Of Depositions taken in this State, to be used in Courts of other States and Countries.

SEC. 37. Any party to a suit depending in any court of any other state of the United States, or of any foreign country, may obtain the testimony of any witness residing in this state, to be used in such suit. Testimony of witnesses in this state, to be used in any other state or country may be obtained.

SEC. 38. If a commission to take such testimony shall have been issued from the court in which such suit is pending, on producing the same to any judge or justice of a court of record, or circuit court commissioner, such officer shall issue a summons to such witness, requiring him to appear before the commissioners named in such commission, to testify in such suit. Summons to witness.

SEC. 39. Such summons shall specify the time and place within the county where the witness resides, at which such witness is required to attend. Contents of summons.

SEC. 40. If a suit be pending in any court of any other state of the United States, or of any foreign country, and it shall satisfactorily appear by affidavit to any officer named in the preceding thirty-eighth section, or to any justice of the peace, Proof required to obtain summons, when no commission issued.

1. That any person residing in this state is a material witness for either party in such suit:

2. That no commission to take the testimony of such witness has been issued: and,

3. That according to the course and practice of the court in which the suit is pending, the deposition of a witness taken without the presence or consent of both parties, will be received on the trial or hearing of such suit:

Such officer shall issue his summons requiring such person to ap-

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Officer to take
and certify testi-
mony, &c.

Liability of wit-
ness for default.

Fees of witness-
es.

When testimony
may be taken to
be perpetua-
ted.
1 Paige, 601.

Proof to be ex-
hibited.
2 Wend., 308.

Summons to wit-
ness.

Testimony when
to be taken.

How testimony
to be taken, &c.

pear before him, at a place within the county in which such witness resides, at some reasonable time, to testify to such suit.

SEC. 41. The officer before whom such witness shall appear, shall take down his testimony in writing, and shall certify and transmit the same to the court before which such suit is pending, in such manner as the practice of the court may require.

SEC. 42. If any person shall refuse or neglect to appear at the time and place mentioned in any summons issued in accordance with the foregoing provisions, or if on his appearance, he shall refuse to testify, he shall be liable to the same penalties as would be incurred for a like offence on the trial of a suit in a justice's court.

SEC. 43. Every witness who shall appear and testify in manner as aforesaid, shall be entitled to receive from the party at whose instance he shall have been summoned, the same fees as are allowed to witnesses for travel and attendance in the circuit court.

Of Proceedings to perpetuate Testimony.

SEC. 44. Any person who is a party to a suit pending in any court of this state, or who expects to be a party to any suit to be thereafter commenced, may cause the testimony of any witness material to him in the prosecution or defence of such suit, to be taken conditionally, and to be perpetuated.

SEC. 45. Upon producing to any justice of the supreme court, county judge, circuit court commissioner, or master in chancery, due proof by affidavit,

1. That the applicant is a party to a suit actually pending in some court of record in this state, or that such applicant has good reason to expect to be made a party to a suit in such court of record: and,

2. That the testimony of any witness within this state, is material and necessary to the prosecution or defence of such suit: and,

3. If such suit be not actually commenced, that the party expected to be adverse to the applicant, resides within this state, and is of full age, or has a guardian within this state: Such officer shall appoint a place within the county where such witness resides, and a time not less than fourteen days from the date of such order, for the examination of such witness.

SEC. 46. Upon the application of the party desiring such examination, such officer shall issue a summons to the witness designated in the original affidavit, requiring him to appear and testify at the time and place appointed.

SEC. 47. After satisfactory evidence shall be given to such officer, that the order directing such examination has been duly served on the adverse party to such suit, if one be pending, or on the person (*persons*) named in the original affidavit, or their guardians, if no suit be pending, at least ten days before the time appointed for such examination, he shall proceed on the day so appointed, or on such other days to which the matter shall be from time to time adjourned, as may be necessary, to take the deposition of such witness conditionally.

SEC. 48. The officer taking such deposition shall insert therein every answer or declaration of the witness examined, which either party shall require to be included therein, and the deposition, when completed, shall be carefully read to, and subscribed by the witness, and shall be certified by the officer taking the same, and within ten days thereafter, shall be filed in the office of the clerk of the county in which

the same was taken, together with the original order for the examination of the witness, and the affidavits on which the same was founded, and that proving the service of such order.

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SEC. 49. The original affidavits filed with such deposition, or a certified copy thereof, shall be presumptive evidence of the facts therein contained, to prove a compliance with the foregoing provisions.

Original affidavits evidence.

SEC. 50. In case a trial shall be had between the persons named in the original affidavit as parties, or named therein, as expected parties, or between any person (*persons*) claiming under such person (*persons*) or either of them, upon due proof of the death or insanity of the witness examined pursuant to the foregoing provisions, or of the inability of such witness to attend such trial, by reason of old age, sickness or settled infirmity, or that he has continued absent out of the state, so that his attendance at such trial could not be compelled by the ordinary process of law, the deposition of such witness, or a certified copy thereof, may be given in evidence by either party.

When deposition may be read in evidence.
3 Wend., 180.

SEC. 51. The deposition so taken and read in evidence, shall have the same effect, and no other, as the oral testimony of the witness would have if given on such trial; and every objection to the competency or credibility of such witness, or to the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if such witness were personally examined on such trial.

Effect of deposition.

SEC. 52. Any officer authorized to take such examination under the preceding provisions, to whom application may be made for that purpose, may order such examination to be had before any officer to whom such application might have been originally made, residing in the same county with the witness to be examined, and such officer shall proceed in the premises in the same manner, and with the like power, as if the order for the examination had been made by him.

Other officer may be substituted.

Of Witnesses, their Privileges and compelling their Attendance.

SEC. 53. The service of a subpoena issued out of any court, to compel the attendance of any witness, shall be made as follows;

Mode of serving subpoenas.

1. The original writ under the seal of the court, shall be exhibited to the witness:

2. A copy of such writ, or a ticket containing its substance, shall be delivered to the witness:

3. The fees allowed by law to such witness for traveling to and returning from the place where he is required to attend, and the fees allowed for one day's attendance, shall be paid or tendered to such witness.

SEC. 54. Every person who shall be duly subpoenaed to attend as a witness, any court within this state, or to attend any officer of a court of record empowered to receive evidence, or any commissioner appointed by such court to take testimony, or any referees or auditors appointed according to law to hear any cause or matter, shall be bound to attend according to the command of such subpoena; and for every failure so to attend, without a reasonable excuse, shall be deemed guilty of a contempt of the court out of which such subpoena issued, shall be responsible to the aggrieved party for the loss and hindrance sustained by such failure, and for all other damages sustained thereby; and shall be further liable to the aggrieved party in the sum of fifty dollars, as additional damages, to be recovered in the same action.

Liability for disobedience.
11 Wend., 636.
12 do 147.

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Mode of serving
summons on wit-
nesses.

SEC. 55. In all cases where, by the provisions of law, any judge or other officer is authorized to summon any person to appear as a witness, either before such judge or officer, or any other judge or officer, to give testimony, or to have his deposition taken, or before any person named in any commission issued by a court of any other state or country, to take testimony, such summons shall be served by,

1. Showing to the witness the original summons, under the hand of the judge or officer issuing the same :

2. Delivering to such witness a copy of the summons, or a ticket containing its substance : and,

3. Paying or tendering to such witness the fees allowed by law for traveling to, and returning from the place where he is required to attend, and the fees allowed for one day's attendance.

Liability for dis-
obedience.

SEC. 56. Every person who shall be duly summoned to attend before any judge or officer, or before any commissioner as above provided, shall be bound to attend according to such summons; and for every failure so to attend, without a reasonable excuse, shall be responsible to the aggrieved party for the loss and hindrance sustained by such failure, and for all other actual damages sustained thereby; and shall be further liable to the aggrieved party, in the sum of fifty dollars, as additional damages.

When warrant
to issue for wit-
ness.

SEC. 57. In case of the failure of any witness so to attend as above provided, the judge or officer issuing the summons, upon due proof of the service thereof, and of the failure of such witness, shall issue his warrant to the sheriff of the county, to apprehend such witness and bring him before such judge or officer to be examined, or to bring him before any person named in the (a) commission issued by a court of any other state or country to take testimony, for the like purpose.

When witness to
be imprisoned.
1 Paige, 601.

SEC. 58. If any witness attending before any judge, officer or commissioner, pursuant to a summons, or brought before them, or either of them, shall, without reasonable cause, refuse to be examined, or to answer any legal and pertinent question, or to subscribe his deposition after the same has been reduced to writing, the officer issuing such summons shall, by warrant, commit such witness to the common jail of the county in which he resides, there to remain until he submits to be examined, or to answer, or to subscribe his deposition, as the case may be, or until he be discharged according to law.

Contents of war-
rant.

SEC. 59. Every warrant of commitment issued by any judge or officer, pursuant to the provisions of this chapter, shall specify therein particularly the cause of such commitment, and if such commitment be for refusing to answer any question, such question shall be stated in the warrant.

To whom war-
rant to be direc-
ted, &c.

SEC. 60. Every warrant to apprehend or commit any witness, authorized by this chapter, shall be directed to the sheriff of the county where such witness may be, and shall be executed by him in the same manner as process issued by courts of record.

Qualification of
preceding provis-
ions.

SEC. 61. The preceding provisions in relation to the apprehension and commitment of witnesses, shall not apply to any case where other special provision is made by law for compelling the attendance of witnesses.

Witness exempt
from arrest.

SEC. 62. Every person duly and in good faith subpoenaed as a witness, to attend any court, officer, commissioner, auditors or referees, or summoned to attend any judge, officer or commissioner, in any case where the attendance of such witness may by law be enforced by attachment, or by warrant, shall be exonerated from arrest in any civil

suit, while going to the place where he shall be required to attend, while remaining in attendance as such witness, and while returning therefrom. TITLE XXII.
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SEC. 63. The court or officer before whom any person shall have been subpoenaed in good faith to attend as a witness, shall discharge such witness from any arrest made in violation of the last section; and if such court shall have adjourned before such arrest, or before application for such discharge was made, any judge of such court shall have the same power to discharge such witness. To be discharged
from arrest by
court, &c.

SEC. 64. Every justice of the supreme court, county judge and circuit court commissioner, shall have the like authority to discharge any witness arrested contrary to the foregoing provisions.

SEC. 65. Every arrest of a witness made contrary to the foregoing provisions, shall be absolutely void, and shall be deemed a contempt of the court issuing the subpoena; and every person making or procuring such arrest, shall be responsible to the witness arrested for three times the amount of damages which shall be found by the jury, and shall also be liable to an action at the suit of the party who subpoenaed such witness, for the loss, hindrance and damage sustained by him, in consequence of such arrest. Arrest to be void.
Penalties for ar-
resting witness.

SEC. 66. But no sheriff or other officer, or person, shall be so liable, unless the person claiming an exemption from arrest, shall, if required by such sheriff or officer, make an affidavit, stating, No liability un-
less affidavit be
made, &c.

1. That he has been legally subpoenaed as a witness, to attend before some court, officer, auditors, referees or commissioners, specifying such court, officer, auditors, referees, or commissioners, the place of attendance, and the cause in which he shall have been subpoenaed: and,

2. That he has not been subpoenaed by his own procurement, with intent to avoid the service of any process:

Which affidavit may be taken by such officer, and when so taken, shall exonerate such officer from all liability for not making such arrest.

Of Documentary Evidence, and the Preservation thereof.

SEC. 67. When notice of any application to any court or judicial officer for any proceeding authorized by law, is required by law to be published in one or more newspapers, an affidavit of the printer of any such paper, or of his foreman or principal clerk, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the times when, and the paper in which such notice was published, may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within six months after the last day of the publication of such notice. Affidavits of pub-
lishing notices of
applications.

SEC. 68. When any notice of a sale of real property is required by law to be published in any newspaper, an affidavit of the printer of such paper, or of his foreman, or principal clerk, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the times when, and the paper in which it was published, may be filed at any time within six months after the last day of such publication, with the county clerk of the county in which the premises sold are situated, or if such sale were made in pursuance of the order of any judge of probate or court of chancery, such affidavit Affidavits of pub-
lishing sales of
real estate.

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Original affidavits
and certified cop-
ies, to be evi-
dence.

Affidavit of prin-
ter, &c., of pub-
lication of noti-
ces.

Copies of pro-
ceedings, &c.,
how certified.

Last section
qualified.

All instruments
except wills,
notes, &c., may
be acknowledged
or proved like
deeds.

Certified copies
of papers filed,
&c., to be evi-
dence.

When certificate
that document,
&c., cannot be
found, evidence
of the facts.

may be filed with such judge of probate, or with a register of such court of chancery, as the case may be.

SEC. 69. The original affidavit so filed pursuant to the two last sections, and copies thereof duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, of the facts contained in such affidavits.

SEC. 70. The affidavit of the printer, or foreman or clerk of any printer of a public newspaper, published in this state, of the publication of any notice or advertisement, which by any law of this state, shall be required to be published in such newspaper, shall be entitled to be read in all courts of justice in this state, and in all proceedings before any officer, body or board in which it shall be deemed necessary to refer thereto, and shall be prima facie evidence of such publication, and of the facts therein stated.

SEC. 71. Whenever a certified copy of any affidavit, record, document or paper, is declared by law to be evidence, such copy shall be certified by the clerk or officer in whose custody the same is by law required to be, to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original; and if such officer have any official seal by law, such certificate shall be attested by such seal; and if such certificate be given by the clerk of any county, in his official character as such clerk, it shall be attested by the seal of the court of which he is clerk.

SEC. 72. But the preceding section shall not be construed to require the affixing of the seal of any court to any certified copy of any rule or order made by such court, or of any paper filed therein, when such copy is used in the same court, or before any officer thereof; nor to require the seal of the supreme court to be affixed to a certified copy of any rule or order of that court, when used in any circuit court.

SEC. 73. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law, for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer endorsed thereon, shall entitle such instrument to be received in evidence on the trial of any action, with the same effect, and in the same manner, as if such instrument were a conveyance of real estate.

SEC. 74. Copies of all papers, records, entries and documents, required by law to be filed by any public officer in his office, or to be entered or recorded therein, and duly filed, entered or recorded according to law, certified by such officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced.

SEC. 75. Whenever any officer to whom the legal custody of any paper, document or record shall belong, shall certify that he has made diligent examination in his office for such paper, document or record, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified, in all causes, matters and proceedings, in the same manner and with the like effect as if such officer had personally testified to the same in the court, or before the officer, before whom such cause, matter or proceeding may be pending.

SEC. 76. The official certificate of any justice of the peace within

any other state of the United States, of the proceedings and judgment in any case before him as such justice, with the certificate of the clerk of any court of record in the county or district in which such justice has executed his office, attested by his official seal, setting forth that the signature to the certificate of the justice is genuine, and that he was such justice at the date of such proceedings and judgment, shall be sufficient evidence of such proceedings and judgment.

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Certificates of justices of the peace of other states.

SEC. 77. The printed copies of all statutes, acts and resolves of this state, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts, and in all proceedings within this state.

Printed copies of statutes of this state, evidence.

SEC. 78. Printed copies of the statute laws, and resolves of any other of the United States, or of any territory thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and used as evidence in their courts, shall be admitted in all courts, and in all proceedings within this state, as prima facie evidence of such laws and resolves.

Printed copies of laws, &c., of other states.

SEC. 79. The unwritten or common law of any other of the United States, or of any territory thereof, or of any foreign state or country, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts, may also be admitted as evidence of such law.

Common law of other states, how proved.

SEC. 80. Any device affixed to any deed or instrument in writing by way of seal, by any person signing the same, executed since the thirty-first day of December, eighteen hundred and twenty-seven, or hereafter to be executed, shall be received in all courts, and upon all occasions, as evidence that the same deed or instrument was duly sealed, and equally valid and effectual, as if the same had been actually sealed; but this section shall not apply to official and corporate seals, in cases where, according to law, an actual sealing may be required.

When device by way of seal, sufficient sealing.

Examination of Witnesses, and Evidence in Certain Cases.

SEC. 81. In all cases in which any county, city, township, village, or school district shall be, in its corporate capacity, a party to, or interested in, any suit or proceeding, any member of such corporation may be admitted as a competent witness therein, if there be no other sufficient objection to his competency.

Members of corporations not incompetent as witnesses.

SEC. 82. In suits by or against an aggregate corporation, the admission of any member thereof not named on the record as a party to such suit, shall not be received as evidence against such corporation, unless such admission was made concerning some transaction, in which such member was the authorized agent of such corporation.

Confessions by corporators.

SEC. 83. Any member of a corporation aggregate, not named on the record as a party to a suit brought by or against such corporation, not otherwise incompetent, shall be received as a competent witness to testify to any matter against the interest of such corporation.

Corporators witnesses in certain cases.

SEC. 84. Any competent witness in a cause, shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish, or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit; but this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse

Witness not excused from answering certain questions.

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Confessions to
ministers, &c.

Information to
physicians and
surgeons.
4 Paige, 461.

Evidence of lost
notes, &c.

Recovery on lost
notes, &c.
12 Wend., 174.

Bond to be given.

Effect of seals to
instruments.
11 Wend., 107.

Notice of de-
fence.

Certain mistakes
to be disregarded.

himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses.

SEC. 85. No minister of the gospel, or priest of any denomination whatsoever, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

SEC. 86. No person duly authorized to practice physic or surgery, shall be allowed to disclose any information which he may have acquired in attending any patient, in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon.

SEC. 87. Whenever a party to any instrument shall have been permitted to prove by his own oath, the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath, to disprove such loss, and to account for such instrument.

SEC. 88. In any suit founded on any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and notwithstanding such bill or note was negotiable, such party shall be entitled to recover the amount due thereon, as if such note or bill had been produced.

SEC. 89. But to entitle a party to such recovery, he shall execute a bond to the adverse party, in a penalty at least double the amount of such note or bill, with two sureties, to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other person on account of such note or bill, and against all costs and expenses by reason of such claim.

SEC. 90. In any action upon a sealed instrument, and where a set-off is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

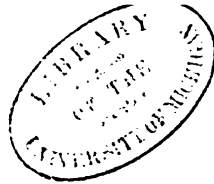
SEC. 91. The defence allowed by the last section shall not be made, unless the defendant shall have given notice thereof with his plea of the general issue.

SEC. 92. Every variance between process, pleadings, or any instrument in writing, recited or referred to in any other process, pleading or record, and every mistake in the name of any officer or other person, or in stating any day, month or year, or in the description of any property, in any pleading or record, shall be disregarded upon the trial of such cause, and after a verdict therein, unless such variance or mistake be calculated to surprise or mislead the adverse party, and to prevent his making due preparation for a full answer on the merits, to the matter concerning which such variance or mistake shall have been made.

Administering Oaths and Affirmations.

General mode of
swearing.

SEC. 93. The usual mode of administering oaths, now practiced in this state, by the person who swears, holding up the right hand, shall



be observed in all cases in which an oath may be administered by law, except in the cases herein otherwise provided. TITLE XXII.
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SEC. 94. When the court, magistrate or other officer before whom any person is to be sworn, shall be satisfied that such person has any particular mode of swearing, which is, in his opinion, more solemn or obligatory than holding up the hand, such court or officer may adopt that mode of administering the oath. When peculiar mode of swearing to be adopted.

SEC. 95. Every person conscientiously opposed to taking an oath, shall, when called on to take an oath, be permitted, instead of swearing, solemnly and sincerely to affirm, under the pains and penalties of perjury. When affirmation to be made.

SEC. 96. No person shall be deemed incompetent as a witness, in any court, matter or proceeding, on account of his opinions on the subject of religion; nor shall any witness be questioned in relation to his opinions thereon, either before or after he shall be sworn. Religious belief of witness not to be inquired into. 1842, p. 21, (No. 18.)

SEC. 97. Whenever any oath or affidavit is or may be required or authorized by law, in any cause, matter or proceeding, except oaths to witnesses and jurors in the trial of a cause, and such other oaths as are or may be required by law to be taken before particular officers, the same may be taken before any justice, judge or clerk of any court of record, circuit court commissioner, notary public or justice of the peace, or any register or master in chancery. Officers authorized to administer oaths. 1839, p. 224, § 26.

SEC. 98. Oaths, affidavits and depositions, in any cause, matter or proceeding in any court of record, may also be taken before any commissioner appointed by such court for that purpose. Commissioners appointed by courts. 1839, p. 224, § 26.

Competency of Witnesses, and Examination of Parties in certain Cases.

SEC. 99. No person shall be excluded from giving evidence in any matter, suit or proceeding, civil or criminal, by reason of crime, or for (of) any interest of such person in the matter in question, or in the event of the suit or proceeding in which his testimony may be offered, unless such person be individually a party, named in the record, to such matter, suit or proceeding, or unless such matter, suit or proceeding be prosecuted or defended, either wholly or in part, in the immediate and individual behalf of such person, or unless such person be the husband or wife of such party; but when such person is a party, he may be a witness under the rules prescribed by statute. Certain persons not excluded from giving evidence.

SEC. 100. Whenever any action, suit or proceeding shall be pending in any court of law, and either party shall make and file with the clerk of such court, or with the clerk of the court in which any issue joined therein shall be triable, an affidavit, setting forth that any facts, material to the issue or question to be tried, are within the knowledge of any other party to such suit or proceeding, and that there is no competent witness whose testimony he can procure, by whom such facts can be proved, the parties to such suit or proceeding, and any other persons interested in the event thereof, may be examined on oath, in relation to such facts. When parties, &c., may be examined as witnesses.

SEC. 101. Upon the filing of such affidavit, such party or person interested, may be compelled to appear and testify in relation to the facts set forth in such affidavit, in the same manner that other persons may be compelled to appear and testify as witnesses. How compelled to appear and testify.

SEC. 102. In all trials of actions before a justice of the peace, or in the county court, if the claim of the plaintiff or any part thereof, be denied by the defendant, it shall be lawful for the plaintiff to require Examination of parties to suits in county courts, and before justices, &c.

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of the defendant to answer on oath to such claim ; and if the defendant when sworn, deny the same, the plaintiff shall not have judgment, unless he establish his claim by legal evidence, and whenever the defendant in any such action shall allege matter of payment or set-off to the plaintiff's demand, or set up any other valid defence in law, he may, in like manner, require the plaintiff to answer such allegation or defence on his oath ; and the plaintiff or defendant, when so required to be sworn by his adversary, shall be at liberty to testify concerning the whole matter in controversy, both as to the cause of action and defence, as a disinterested witness might do ; and either party may, at the request of his adversary, be subpoenaed and compelled to attend and testify as aforesaid, in the manner, and under the same penalties, as other witnesses ; and upon the refusal of either party, when subpoenaed by personal service of the subpoena, to appear, or appearing, upon his refusal to answer as a witness for the adverse party, as prescribed in this section, the court may enter judgment against the party refusing, as if the alleged claim or demand were confessed, or the allegation or defence admitted, as the case may be, and the deposition of either party residing out of the county where the suit is pending, may in such cases, be taken by his adversary, and used in evidence in the same manner as the depositions of other witnesses.

CHAPTER 103.

OF THE TRIAL OF ISSUES OF FACT.

General Provisions concerning Trials, and the Proceedings preparatory thereto.

What issues of fact to be tried in circuit court.

SECTION 1. All issues of fact which shall be joined in any probate court, shall be sent for trial and tried in the circuit court for the same county.

In what counties issues of fact to be tried.

SEC. 2. Issues of fact joined in such actions, shall be tried in the proper county, as follows :

1. Actions for the recovery of any real estate, or for the recovery of possession of real estate, actions for trespass on land, and actions for (of) trespass on the case for injuries to real estate, shall be tried in the county where the subject of the action shall be situated :

2. Actions of trespass for injuries to the person ; and actions on the case for injuries to the person, or personal property, shall be tried in the county where the cause of action arose :

3. Actions of slander, for libels, and all other actions for wrongs, and upon contracts, shall be tried in the county where one of the parties shall reside, at the time of commencing such action ; unless the court shall deem it necessary for the convenience of parties and their witnesses, or for the purposes of a fair and impartial trial, to order any such issues to be tried in some other county ; in which case the same shall be tried in the county so designated.

In certain suits against public officers, judgment of discontinuance to be rendered.

SEC. 3. In suits against public officers, or against any person specially appointed to execute the duties of such officers for any act done by them by virtue of their offices respectively, and in suits against

other persons, who, by the command of such officers, or in their aid or assistance, do any thing touching the duties of such office, which are required by law to be laid in the county where the fact happened, if it shall not appear on the trial, that the cause of such action arose within the county where such trial is had, the jury shall be discharged, and judgment of discontinuance shall be rendered against the plaintiff.

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9 Wend., 208-501.

SEC. 4. All issues of fact joined in any court proceeding according to the course of the common law, shall be tried by jury, except in those cases where a reference shall be ordered, or where the parties agree upon a case, and submit the facts to the court, or where the parties agree in writing to dispense with a jury.

All issues of fact to be tried by jury, except in case of reference, &c.

SEC. 5. Written notice of trial of every issue of fact in a circuit court, shall in all cases be served at least fourteen days before the first day of the court at which such trial shall be intended to be had.

Notice of trial.
5 Wend., 137.

SEC. 6. A note of the issue joined in any cause in a circuit court, shall be served on the clerk of such court, at least four days before the opening of such court.

Note of issue to be served on clerk.

SEC. 7. It shall not be necessary, in any case, to issue or award any venire for the summoning of jurors to attend any circuit court.

Venire for jury not necessary.

Of the Return and Summoning of Jurors.

SEC. 8. The assessors and township clerk of each township, and the assessor and alderman of each ward in the city of Detroit, shall, at the time appointed by law for said assessors to review their assessment roll in each year, make a list of persons to serve as [petit jurors, and a list of persons to serve as] grand jurors for the ensuing year.

Assessors, &c. to make lists of persons to serve as jurors.
1840, p. 49, 50.
1841, p. 55.

SEC. 9. The said officers shall proceed to select from those assessed on the assessment roll of the township or ward for the same year, suitable persons, having the qualifications of electors, to serve as jurors; and in making such selection, they shall take the names of such only as are not exempt from serving on juries; who are in possession of their natural faculties, and not infirm or decrepit; of fair character, of approved integrity, of sound judgment, and well informed, and free from all legal exceptions.

Selection how made.

SEC. 10. Such lists shall contain not less than one for every one hundred inhabitants of such township or ward, computing according to the last preceding census, and having regard to the population of the county, so that the whole number of jurors selected in the county shall amount at least to one hundred, and not exceeding four hundred, one half of whom shall be designated as petit jurors, and one half as grand jurors.

Number to be selected.

SEC. 11. In making such selection, the said officers shall avoid, as far as practicable, selecting any of the same persons who were actually drawn, and who served as jurors, during the preceding year.

Officers to avoid selecting persons who served the preceding year.

SEC. 12. Duplicate lists of the persons so selected, shall be made out and signed by the officers making such selection, or the major part of them, and within ten days thereafter one of each of said lists shall be transmitted to the county clerk, and the other shall be filed with the clerk of the township or assessor of the ward, as the case may be.

Duplicate lists to be made, and how disposed of.

SEC. 13. On receiving such lists, the county clerk shall file the same in his office, and shall write down the names contained therein, on separate pieces of paper, of the same size and appearance, as nearly as may be, and shall fold up each of such pieces of paper so as to con-

County clerk to deposit names in jury boxes.

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Persons returned to serve one year and until others are returned.

On receiving new lists, clerk to destroy ballots, &c.

Juries, when to be drawn, &c.
4 Wend., 677.

Clerk to give notice of drawing to sheriff, &c.

Duty of sheriff and judges to attend drawing, &c.

If two of the officers notified do not attend, clerk to adjourn drawing, &c.

Jury to be drawn on adjourned day, if two officers attend.

Drawing, how conducted.

ceal the name thereon, and deposite those on the lists of petit jurors in a box to be kept by him for that purpose, to be labelled "petit jury box," and those on the lists of grand jurors in a separate box, to be labelled "grand jury box."

SEC. 14. The persons whose names shall be so returned, shall serve as such jurors for one year, and until other lists from the respective townships or wards, shall be returned and filed.

SEC. 15. Upon receiving such new lists, the county clerk shall destroy the ballots deposited in the jury boxes for the year preceding, and deposite the ballots containing the names entered on such new lists in the same manner as above required.

SEC. 16. At least fourteen days before the holding of any circuit court at which such juries shall be required by law, the clerk of the county where such court is to be held, shall draw from the petit jury box the names of twenty-four persons, and any additional number that may have been ordered by the court, to serve as petit jurors; and from the grand jury box, the names of twenty-three persons to serve as grand jurors.

SEC. 17. At least three days before the drawing of such jurors, the clerk shall give notice to the sheriff and county and second judge of the county, of the day and hour when such drawing will take place.

SEC. 18. At the time so appointed, it shall be the duty of the sheriff of the county in person, or by his under sheriff, and county and second judge, to attend at the clerk's office of the county to witness such drawing; and if any two of said officers shall attend at the time and place appointed, the clerk shall proceed in his (*their*) presence to draw the jurors.

SEC. 19. If two of the officers so notified do not appear, the clerk shall adjourn the drawing of such jurors until the next day, and shall, by written notice, require any justice of the peace of the county, to attend such drawing on the adjourned day.

SEC. 20. If at the adjourned day, any two of the officers notified to attend the drawing of such jurors shall appear, but not otherwise, the clerk shall proceed, in the presence of the officers so appearing, to draw the jurors.

SEC. 21. The clerk shall conduct such drawing as follows:

1. He shall shake each of the boxes containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written, as much as possible:

2. He shall then publicly draw out of the said boxes, respectively, as many of said slips of paper containing such names of grand and petit jurors, or both, as shall be required by law, or specially ordered for such court:

3. A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the name contained on every slip of paper so drawn, before any other such slip shall be drawn:

4. If, after drawing the whole number required for grand or petit jurors, the name of any person shall appear to have been drawn who is dead, or become insane, or who has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing such name shall be destroyed:

5. Another name shall then be drawn in place of that contained on

the slip of paper so destroyed, which shall, in like manner, be entered in the minutes of the drawing :

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6. The same proceedings shall be had as often as may be necessary, until the whole number of jurors required shall have been drawn :

7. The minute of the drawing shall then be signed by the clerk and the attending officers and filed in the clerk's office :

8. Separate lists of the names of the persons so drawn for petit jurors, and of those drawn for grand jurors, with their places of residence, and specifying for what court they were drawn, shall be made and certified by the clerk and the attending officers, and shall be delivered to the sheriff of the county.

SEC. 22. The sheriff shall summon the persons named in such lists respectively, to attend such court, at least six days previous to the sitting thereof, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age ; and shall return such lists to the court, at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

Jury how summoned.

SEC. 23. It shall be the duty of the county clerk to furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the lists of jurors drawn to attend any court.

Copy of lists to be furnished by clerk on application, &c.

SEC. 24. The court to which any list of jurors shall be returned by the sheriff, shall impose a fine, not exceeding twenty dollars, for each day that any person duly summoned as a juror shall, without reasonable cause, neglect to attend ; but if it appear by such return, that any person was notified by leaving a written notice at his place of residence, the court shall suspend the imposition of such fine until the defaulting juror shall be notified to appear and show cause why the same should not be imposed.

Fines to be imposed on jurors for neglecting to attend.

SEC. 25. The following persons shall be exempt from serving as jurors, to wit : the governor, lieutenant governor, secretary, treasurer and auditor general of the state, the justices of the supreme court, all judges of courts of record, acting commissioner of internal improvement, commissioner of the land office, superintendent of public instruction, clerks of courts, registers in chancery, registers of deeds, sheriffs and their deputies, coroners, constables, all officers of the United States, attorneys and counsellors at law, and solicitors and counsellors in chancery, officers of the university, officers of colleges, settled ministers of the gospel, preceptors and teachers of incorporated academies, all superintendents, engineers and collectors of any canal or railroad authorized by the laws of this state, any portion of which shall be actually constructed and used, constant ferrymen, all members of any company of firemen organized according to law, all persons more than sixty years of age, and all other persons exempted by any other law of this state from serving on juries.

What persons exempted from serving as jurors.

SEC. 26. The court to which any person shall be returned as a juror, shall excuse such juror from serving at such court, whenever it shall appear,

When court shall excuse person from serving as a juror.

1. That he is exempt from serving on juries by the provisions of the preceding section : or,

2. That he is a practising physician or surgeon, and has patients requiring his attention : or,

3. That he is a justice of the peace, or executes any other civil

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office, the duties of which are, at the time, inconsistent with his attendance as a juror : or,

4. That he is a teacher of any school, actually employed and serving as such : or,

5. When for any other reason, the interests of the public, or of the individual juror, will be materially injured by such attendance, or his own health, or that of any member of his family requires his absence from such court.

Ballot containing name of person excused, how disposed of.

SEC. 27. When any person shall be so excused from serving, on the ground that he is exempt by law from serving on juries, the clerk shall destroy the ballot containing the name of such person ; and when any person shall be so excused from serving for any other cause, the ballot containing his name shall be returned to the box from which it was drawn.

Disposition of ballots after adjournment of court.

SEC. 28. After the adjournment of any court at which any jurors shall have been returned, as herein provided, the clerk shall enclose the ballots containing the names of those who attended and served as jurors, in an envelope under seal, or deposite the same in a separate box ; and the ballots containing the names of those who did not appear and serve as jurors, which shall not have been destroyed, shall be returned to the box from which they were taken.

Proceedings in case of a deficiency of names in box at drawing.

SEC. 29. If at the time of drawing any jury by the clerk, as herein provided, there shall not be a sufficient number of ballots remaining in the boxes in which they were originally deposited, after drawing all that may be therein, the clerk shall return to such boxes the ballots containing the names of those who have previously attended and served as jurors during the same year, and shall then draw from such boxes the number of jurors required, in the same manner and with the like effect, as if such jurors had not been previously drawn.

When order for additional number of petit jurors may be made.

SEC. 30. Whenever in the opinion of the judge of any circuit court, more than twenty-four petit jurors shall be necessary to attend any such circuit court, he may, by an order under his hand, direct such additional number of jurors as he shall deem necessary, not exceeding twenty-four, to be drawn.

Order to be filed with clerk, and additional number drawn.

SEC. 31. Such order shall be served on, and filed with the clerk of the county in which such court is to be held, at least twenty days previous to the day appointed for the commencement thereof ; and the said clerk shall thereupon draw the number specified in such order, in addition to the number otherwise required by law, and shall proceed therein in all respects, in the same manner herein prescribed.

When court may order jury to be drawn and summoned forthwith, &c.

SEC. 32. Whenever, for any cause grand or petit jurors shall not have been drawn and summoned to attend any circuit court, or a sufficient number of qualified jurors shall fail to appear, such court may, in its discretion, order a sufficient number of grand or petit jurors, or both, to be forthwith drawn and summoned to attend such court ; or such court may, by an order to be entered in the minutes of such court, direct the sheriff of the county forthwith to summon so many good and lawful men of his county to serve as such jurors, as the case may require.

Duty of sheriff on receiving list, or copy of order.

SEC. 33. The sheriff, on receiving a list of jurors drawn pursuant to the preceding section, or a copy of the order therein mentioned, shall proceed as soon as practicable, to summon such jurors in the manner aforesaid, forthwith to attend such court ; and shall in like manner return the names of those summoned by him to the court

specifying in such return the manner in which each person was notified.

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SEC. 34. When there shall not be jurors enough present to form a pannel in any cause, the circuit court may direct the sheriff or other proper officer, to summon a sufficient number of persons having the qualifications of jurors, to complete the pannel, from among the bystanders, or from among the neighboring citizens, and the sheriff shall summon the number so ordered accordingly, and return their names to the court.

Talesmen, when to be ordered and summoned.

SEC. 35. Every person summoned pursuant to the provisions of the three last sections, shall attend forthwith, and serve as a juror, unless excused by the court; and for every neglect or refusal so to attend, shall be subject to fine, in the same manner as jurors regularly drawn and summoned, as hereinbefore provided.

Person summoned and neglecting to attend, subject to fine.

Special Juries.

SEC. 36. When it shall appear to the circuit court, that a fair and impartial trial will be more likely to be obtained in any cause pending therein, by having a struck jury, such court shall order a special jury to be struck for the trial of such cause.

When circuit court may order special jury.
10 Wend., 570.

SEC. 37. The party obtaining such order, shall give notice, eight days previously, of the time when he will attend before the clerk of the county in which the venue in such action is laid, for the purpose of having such jury struck.

Notice of striking jury.

SEC. 38. At the time appointed, the clerk of the county shall attend at his office, with the original lists of grand and petit jurors returned to him by the officers of the several townships and wards, who are then liable to serve, and in the presence of the parties or their counsel, shall proceed to strike a jury as follows :

Special jury, how struck, &c.

1. The clerk shall select from such lists the names of forty-eight persons, whom he shall deem most indifferent between the parties, and best qualified to try the cause.

2. The party on whose application such struck jury was ordered, or his attorney, shall then first strike out one of said names, and the opposite party, or his agent or attorney, shall strike out another of such names, and so alternately until each party shall have stricken out twelve names :

3. If either party shall fail to attend at the time and place of striking such persons, or shall neglect to strike out any names according to the foregoing provisions, the clerk shall strike out such names for such party :

4. The clerk shall thereupon make out a list of the names of the twenty-four persons not stricken out, and certify the same to be the persons drawn to serve as jurors, pursuant to the order of the court, and shall deliver such list so certified, to the sheriff of the county.

SEC. 39. The sheriff shall summon the persons whose names are contained on the list so delivered to him by the clerk, in the same manner as other jurors are required to be summoned, and shall return the names of those summoned to the court, at which they are required to appear as jurors.

Sheriff to summon jury.

SEC. 40. A jury shall be formed in the manner directed by law in respect to other juries, from the persons so summoned and appearing, who shall try the cause in which such struck jury shall have been ordered ; but the court shall have the same power to excuse or discharge any such juror, as in other cases,

Jury to be formed from persons summoned and attending.

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Proceedings in case clerk is interested.

SEC. 41. If it shall appear to the court to which any application for a struck jury shall be made, that the clerk of the county is interested in the cause, or related to either of the parties, or not indifferent between them, such court shall appoint two proper persons to strike such jury; and the persons so appointed shall have the same powers herein conferred upon the clerk, in relation to the striking, certifying and delivering to the sheriff the names of the persons struck as jurors, and the sheriff shall in like manner summon the persons so selected.

Expense of striking jury, by whom paid, &c.

SEC. 42. The expense of striking a jury shall be paid by the party applying for the same, and shall not be taxed in the costs of the suit, and the struck jurors shall be paid as in other cases.

Of Trial and its Incidents.

Trials of fact to be had by jurors summoned, &c., as herein directed.

SEC. 43. Trials of fact, by jury, in every court of record of common law jurisdiction, shall be had by jurors drawn or ordered, summoned and returned, in the manner hereinbefore directed, except as otherwise provided by law; and no alien shall be entitled to a jury of part aliens or strangers, in any case whatever.

Clerk being interested, &c., not a cause of challenge.

SEC. 44. It shall not be a cause of challenge to any pannel or array of jurors, in any cause, that the clerk of the county who drew them, was a party or interested in such cause, or was counsel or attorney for, or related to either party therein.

When interest of sheriff not a cause of challenge.

SEC. 45. It shall not be a good cause of challenge to the pannel or array of jurors in any cause, if such jurors shall have been drawn in the manner hereinbefore provided, that they were summoned by the sheriff who was a party, or interested in such cause, or related to either party therein, unless it be alleged in such challenge, and be satisfactorily shown, that some of the jurors drawn by the clerk were not summoned, and that such omission was intentional.

Liability to pay taxes not a cause of challenge.

SEC. 46. In penal actions, for the recovery of any sum, it shall not be a good cause of challenge to the jurors summoned, or to any officer summoning them, that such juror or officer is liable to pay taxes in any county, city, village, township or district, which may be benefited by such recovery.

On return of jurors, clerk to write names, &c.

SEC. 47. On the return of every list of petit jurors summoned by the sheriff to attend any circuit court, the clerk of such circuit court shall cause the names of the several persons so returned, and who shall not be discharged or excused by the court, to be written on several and distinct pieces of paper; and shall roll or fold such pieces of paper, each in the same manner, as near as may be, and so as to resemble each other as much as possible, and so that the name written thereon shall be concealed.

Pieces of paper containing names to be deposited in box.

SEC. 48. The said pieces of paper shall be deposited in a sufficient box, from which they shall be drawn as hereinafter provided.

Jury for trial of issue, how drawn.

SEC. 49. When an issue shall be brought on for trial, the clerk of the court, under its direction, shall openly draw out of the box in which they were deposited, so many of the ballots containing the names of the petit jurors returned, one after another, as shall be sufficient to form a jury.

First twelve drawn, &c. to try cause.
7 Cowen, 369.
6 Wend., 548.

SEC. 50. The twelve first persons who shall appear as their names are drawn and called, and shall be approved as indifferent between the parties, shall be sworn, and shall be the jury to try the cause.

SEC. 51. The ballots containing the names of the jurors so sworn,

shall then be deposited in another box, and there kept apart from the ballots containing the names of the other jurors until such jury be discharged.

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Names of jurors sworn, how disposed of.

When names of jurors sworn to be returned to box from which they were drawn.

When court may order jury to be drawn from box containing ballots undrawn, &c.
7 Wend., 421.

SEC. 52. After such jury shall have been discharged, the ballots containing their names shall be again rolled or folded up, in the same manner as herein before directed, and shall be returned to the box from which they were first taken; and the same course shall be pursued, as often as any issue shall be brought on to be tried.

SEC. 53. If any issue shall be brought on to be tried, while there shall be a jury impaneled in another cause in the same court, and not then discharged, the court may order a jury to be drawn in the manner above directed, out of the box containing the ballots then undrawn; but in all other cases the ballots containing all the names of jurors returned, and appearing at such court, and not discharged or excused from serving, shall be placed together in the same box, before any jury shall be drawn therefrom.

When court may order jury to be summoned from by-standers.

SEC. 54. If by reason of there being one or more juries impaneled, or for any other reason, there shall not remain any ballots undrawn, or if in consequence of jurors being set aside, no jury can be obtained from the list of those returned by the sheriff, for the trial of any issue, the court may, as in other cases, order the sheriff, or if he be a party or interested in the cause, some other person to be appointed by the court, to summon jurors from the by-standers, or other persons, who shall be returned and sworn as herein before directed, and shall be a competent jury for the trial of such issue, notwithstanding there may be none of the pannel of jurors returned by the sheriff, upon such jury.

Box to be shaken before drawing jurors, &c.

SEC. 55. Before any jury shall be drawn, the box containing the ballots of the names of the jurors shall be closed, and shall be well shaken, so as to intermingle such ballots; and the clerk shall draw such ballots without seeing the names written on them, through a hole in the top or lid of such box, so large only as conveniently to admit his hand.

Proceeding if juror be absent when called, &c.
7 Cowen, 369.

SEC. 56. If any juror be absent at the time his name is drawn, or be set aside or excused from serving on the trial of any issue, the ballot containing his name shall be rolled up or folded again, in the same manner as before, and returned to the box containing the undrawn ballots, so soon as the jury shall be sworn to try such cause.

Jury may find special verdict.

SEC. 57. No jury shall be compelled in any case, to give a general verdict, so that they find a special verdict showing the facts respecting which issue is joined, and therein require the judgment of the court upon such facts.

Challenges.

SEC. 58. In all civil cases, each party may challenge, peremptorily, two jurors, and in all prosecutions in the name of the people of this state, the defendant and the attorney appearing for the people, may each challenge two jurors peremptorily; but in all cases of challenge for cause, such cause shall be immediately assigned, and the truth thereof shall be determined by the court.

Jurors not to be questioned for verdict, &c.

SEC. 59. No juror shall be questioned for any verdict rendered by him, nor shall he be subject to [any] action, civil or criminal, on account of such verdict, except to indictment for corrupt conduct in rendering such verdict, in the cases prescribed by law.

Liability of jurors for taking gift, &c., from any party.

SEC. 60. If any person drawn or summoned as a juror, shall take any thing to give his verdict, or shall receive any gift or gratuity

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whatever, from any party to a suit, for the trial of which such person shall be drawn or summoned, in addition to any criminal punishment to which he may be subject by law, he shall be liable to the party aggrieved thereby, in ten times the amount or value of the thing which he has taken or received, in addition to the actual damages sustained thereby.

Liability of embraceor.

SEC. 61. Every embraceor who shall procure a person drawn or summoned as a juror, to take gain or profit contrary to the provisions of the preceding section, shall be liable in ten times the amount or value of the thing so taken, in addition to the actual damages sustained thereby.

Exceptions to opinion, &c., of circuit court.

SEC. 62. Any party aggrieved by any opinion, direction or judgment of any circuit court in any civil suit or action, may allege exceptions thereto in writing at the time such opinion or direction is given, or such judgment pronounced, or if such exception be to the charge given to the jury, it shall be made before the jury shall have delivered their verdict.

Court may allow time to settle exceptions, &c.

SEC. 63. The court may allow such time as shall be deemed reasonable to settle such exceptions, and reduce the same to form.

Exceptions when to be signed, &c. 1844, p. 45, § 1. 1 Doug. M. R. 273.

SEC. 64. If the truth of the case be fairly stated in such exceptions, it shall be the duty of the judge holding such court, to sign such statement, and he may be compelled to do so by the court to which any writ of error may by law be brought, upon the judgment rendered in such cause, or which shall have authority to decide on such exceptions when returned by them (*him*).

Exceptions not to prevent argument of motion to set aside verdict, &c.

SEC. 65. If a bill of exceptions be signed in a cause, it shall not prevent the argument of a motion to set aside the verdict in such cause, on the ground that such verdict was against evidence; but such motion shall be argued, either before or after the decision of the court on the bill of exceptions, as the court shall direct.

When bill of exceptions to be filed with clerk of circuit court.

SEC. 66. If such bill of exceptions be taken in any case pending in any circuit court, it shall be filed with the clerk of such court, who shall return the same, together with the record and other proceedings, in any cause which shall be removed by writ of error, or otherwise.

When judgment as in case of non-suit may be rendered. 9 Wend., 461.

SEC. 67. When an issue of fact shall be joined in any cause, and the plaintiff shall neglect to bring such issue to trial, according to the course and practice of the court, such court, on the application of the defendant, may give the like judgment for the defendant as in cases of non-suit, or may, upon just terms, allow a further time for the trial of such issue.

Ib.

SEC. 68. If further time for the trial of such issue be allowed by the court, and the plaintiff shall neglect to try the same within the time so allowed, the court shall give judgment for the defendant, as in cases of non-suit.

Effect of judgment for neglect to bring cause to trial, &c.

SEC. 69. All judgments given for a neglect to bring a cause to trial, shall have the like force and effect as judgments upon non-suits, and no other; and costs shall be awarded upon such judgments, in the same cases as on judgments upon non-suits, and in no other case.

Statement of continuance on record.

SEC. 70. If a cause be not tried at any circuit court, after issue shall have been joined therein, it shall be a sufficient continuance to state the fact upon the record that such cause was not tried.

View of premises, &c., by jury.

SEC. 71. When any court of record in which an issue of fact is tried by a jury, shall deem it necessary that the jury view the place or

premises in question, or any property or thing relating to the issue between the parties, such court may, on the application of either party, and the advancement of a sufficient sum to pay the expenses of the jury and officers attending them, in taking such view, order such view to be had, and direct the manner of effecting the same.

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SEC. 72. The expenses advanced by any party pursuant to the provisions of the preceding section, shall be taxed like other disbursements in the suit, if the party advancing them shall prevail therein, and be entitled to costs.

Expenses of view
when to be taxed
as costs.

CHAPTER 104.

OF AMENDING PLEADINGS AND PROCEEDINGS.

SECTION 1. The court in which any action shall be pending, shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before judgment rendered therein.

Court may
amend pleadings,
&c., at any time
before judgment.
5 Wend., 172.
9 do. 310.
When opposite
party may an-
swer amended
pleading.

SEC. 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.

SEC. 3. After judgment rendered in any cause, any defects or imperfections, in matter of form, contained in the record, pleadings, process, entries, returns, or other proceedings, may be rectified and amended by the court, in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variation in the record, from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.

Defects in matter
of form may be
amended after
judgment, &c.

SEC. 4. All returns made by any sheriff or other officer, or by any court or subordinate tribunal, to any court, may be amended, in matter of form by the court to which such returns shall be made, in their discretion, as well before as after judgment.

Amendment of
returns made by
sheriffs, &c.

SEC. 5. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall any judgment upon confession, default, *nihil dicit*, or *non sum informatus*, be reversed, impaired or in any way affected, by reason of the following imperfections, omissions, defects, matters or things, or any of them, in the pleadings, process, record, or proceedings, namely:

When judgment
not to be stayed
or affected by
reason of certain
defects, &c.

1. For any default or defect in process; or for misconceiving any process, or awarding the same to a wrong officer; or for the want of any suggestion for awarding process, or for any insufficient suggestion:

2. For any imperfect or insufficient return of any sheriff or other officer, or that the name of such officer is not set to any return actually made by him:

3. For any variance between the original writ, bill, plaint and declaration, or between either of them:

4. For any mispleading, miscontinuance, or discontinuance, insufficient pleading, or misjoining of issue:

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5. For the want of any warrant of attorney by either party, **except** in cases of judgment by confession, where such warrant is **expressly** required by law :

6. For any party under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him :

7. For the want of any allegation or averment, on account of which omission a special demurrer could have been maintained :

8. For omitting any allegation or averment of any matter, without proving which the jury ought not to have given such verdict :

9. For any mistake in the name of any party or person, or in any sum of money ; or in the description of any property ; or in reciting or stating any day, month or year, when the correct name, time, sum or description shall have been once rightly alleged, in any of the pleadings or proceedings :

10. For a mistake in the name of any juror or officer :

11. For the want of a right venue, if the cause was tried by a jury of the proper county :

12. For any informality in entering a judgment, or making up the record thereof ; or in any continuance or other entry upon such record :

13. For any other default or negligence of any clerk or officer of the court, or of the parties, or their counsellors or attorneys, by which neither party shall have been prejudiced.

Omissions, &c., before enumerated, to be supplied and amended by court.

SEC. 6. The omissions, imperfections, variances and defects in the preceding sections of this chapter enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties, or the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error.

Process, &c., not to be amended without order of court.

SEC. 7. No process, pleading or record, shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or of some other court of competent jurisdiction.

Provisions of this chapter, to what actions and writs to extend.
6 Wend., 516.

SEC. 8. The provisions of this chapter shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to the people of this state, or for any debt, duty or revenue belonging to them ; and to all actions for penalties and forfeitures ; to all writs of mandamus and prohibition ; to all informations in the nature of a quo warranto ; to writs of scire facias ; and to the proceedings thereon.

CHAPTER 105.

OF THE ASSESSMENT OF DAMAGES.

Assessment of damages by clerk.

SECTION 1. In every suit brought in a court of record, wherein any written obligation or contract specified in the next section, shall be set forth in the declaration as the cause of action, if interlocutory judgment be rendered for the plaintiff by default, or upon demurrer, or upon confession, the court shall direct the clerk thereof to examine, ascertain and report, what sum the plaintiff ought to recover for his damages.



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SEC. 2. The obligations or contracts upon which such assessment may be made, must be in writing, and must be, either,

1. A bill of exchange, promissory note, order or draft for the payment of money : or,

2. Some contract for the absolute payment of money only : or,

3. Some contract for the payment of a sum certain, though payable in specific articles : or,

4. Some contract for the delivery of specific articles, at a value or price stipulated in the same contract.

SEC. 3. In all actions on promissory notes or bills of exchange, where the plaintiff shall file and serve with his declaration, a copy of such promissory note or bill of exchange, the damages may be assessed as though such note or bill had been set out specially in said declaration.

SEC. 4. If the defendant shall have appeared in the cause by attorney, or shall have given notice of his intention to appear and defend the action, the like notice of assessment of damages by the clerk shall be given, as is required of the trial of a cause ; but in all other cases, no notice shall be necessary, and the clerk shall proceed therein in (*on*) the entry of the rule requiring such assessment.

SEC. 5. In assessing such damages, the production to the clerk of the bill of exchange, promissory note or contract, specially set forth in the declaration, or a copy of which bill of exchange or promissory note has been filed and served with the declaration, shall be sufficient evidence of the execution of the same, without any other proof; and such assessment shall be made notwithstanding there may be general or other counts in the declaration, besides those in which the note, bill or contract shall be specially set forth.

SEC. 6. Any clerk authorized by the provisions of this chapter to assess damages, may administer oaths to witnesses, and take their testimony, whenever it may be necessary ; and if the instrument declared on be lost, the clerk may take proof thereof, and of the contents of such instrument, which proof shall be stated in his report ; and whenever required by either party, he shall reduce to writing the testimony taken by him, and include the same in his report.

SEC. 7. The clerk shall report to the court the sum ascertained by him to be due to the plaintiff, and shall certify under his hand, upon such original bill, note or contract, the amount of damages assessed thereon, or shall annex a certificate thereof to such bill, note or contract.

SEC. 8. Either party may except to such report, and on such exceptions being made and filed, the court shall hear and examine the matter, and cause justice to be done between the parties ; and shall give judgment for the sum reported, or for such sum as the court, upon hearing the exceptions, if any, shall have ascertained to be due to the plaintiff.

SEC. 9. The judgment so rendered shall be entered on the record without stating any reference to the clerk, or any proceedings in consequence thereof, and the damages shall be stated as having been assessed by the court.

SEC. 10. If a bond taken on the arrest of a defendant, in any action in which an assessment might be made by the clerk, shall have been prosecuted by the plaintiff in such action, and judgment rendered thereon, the court shall in like manner direct the clerk to examine,

Contracts upon which clerk may assess.

When copy, note &c., is filed and served.

Notice of assessment.
10, Wend., 560.

Evidence to be produced.

Authority of clerk, &c.

Report and certificate of clerk.

Exceptions to report ; judgment.

Entry of judgment.

Damages in suits on bail bonds.

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Proceedings to
assess.

When damages
to be assessed in
original action.

Declaration in
original suit to be
filed before as-
sessment.

Amount to be en-
dorsed and col-
lected on execu-
tion.

When damages
may be assessed
by a jury.

Judgment upon
assessment.

ascertain and report what sum the plaintiff ought to recover for the damages upon his original cause of action.

SEC. 11. The same proceedings in all respects shall be had in ascertaining such damages, as are herein provided, in case interlocutory judgment had been rendered in such original action.

SEC. 12. When a bond taken on the arrest of a defendant, in other causes than those provided for in the two last sections, shall have been assigned to the plaintiff, and judgment shall be rendered thereon in his favor, damages may be assessed by a jury in the original action, in the same manner as if the defendant had appeared therein, and interlocutory judgment had been obtained against him.

SEC. 13. In all cases in which a judgment shall be rendered for the plaintiff, on a bond taken upon the arrest of a defendant, no damages shall be assessed until a declaration in the original action shall have been filed.

SEC. 14. The damages so assessed, either by the clerk, or by a jury, with the interest, the costs in the original suit, and in the suit on such bond, shall be endorsed upon the execution issued upon such judgment, as the amount to be collected, with sheriff's fees, and no more shall be collected on such execution.

SEC. 15. In all other suits wherein by the preceding provisions, the clerk is not authorized to assess the damages, if interlocutory judgment be rendered for the plaintiff by default, or upon demurrer, or upon confession, damages may be assessed by a jury.

SEC. 16. Upon damages being assessed by a jury, judgment shall be entered for the plaintiff for the damages which shall be so ascertained, as in case of verdicts upon trial had.

CHAPTER 106.

OF JUDGMENTS AND EXECUTIONS.

Of Judgments.

After verdict,
plaintiff not to be
non-suited.

Setting aside
judgments on
motion.

Judgment by
confession.
9 Wend., 452.

SECTION 1. When a verdict shall have been rendered in any action, the plaintiff shall not thereafter be non-suited, but judgment shall be rendered upon the matter found by such verdict.

SEC. 2. No judgment in any court of record, shall be set aside for irregularity on motion, unless such motion be made within one year after the time such judgment was rendered.

SEC. 3. Judgments may be entered in any circuit court in vacation as well as in term, upon a plea of confession, signed by an attorney of such court, although there be no suit then pending between the parties, if the following provisions be complied with, and not otherwise :

1. The authority for confessing such judgment, shall be in some proper instrument, distinct from that containing the bond, contract or other evidence of the demand for which such judgment was confessed :

2. Such authority shall be produced to the officer signing such judgment, and shall be filed with the clerk of the court in which the judg-

ment shall be entered, at the time of the filing and docketing of such judgment.

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Of Executions.

SEC. 4. Whenever judgment shall be rendered in any court of record, for any debt, damages, sum of money or costs; the party in whose favor judgment was rendered, *and* within two years thereafter, may have execution to the sheriff or other proper officer of any county in this state, to collect the amount of such judgment.

When executions may be issued.

SEC. 5. Successive executions may be issued, one after the other, upon the return of any former execution unsatisfied, in whole or in part, for the amount remaining unpaid upon any judgment, except as herein otherwise provided; but no second or subsequent execution shall issue, except within two years after the return day of the preceding execution, unless the court or some judge or justice thereof, or circuit court commissioner, in vacation, upon a special application for that purpose, and due notice to the opposite party, shall make an order granting leave to issue the same.

Successive executions, when may be issued. 1841, p. 134, § 2.

SEC. 6. Such execution may be either,

1. Against the goods and chattels, lands and tenements of the party against whom such judgment was recovered: or,

Kind of executions.

2. Against the body of such party, in the cases authorized by law.

SEC. 7. But such execution shall not issue against the body, nor against the goods and chattels, lands and tenements of any executor, administrator, heir, devisee or legatee, unless in those cases specially provided by law.

Exception of executors, &c.

SEC. 8. In those cases in which bail shall have been taken on the arrest of a defendant, and the bail bond shall have been assigned to the plaintiff; and in those cases in which special bail shall have been filed, no execution shall issue against the body of the defendant in such action, until an execution against the goods and chattels, lands and tenements of such defendant, shall have issued to the sheriff or other proper officer of the county in which such defendant was arrested, and shall have been returned unsatisfied, in whole or in part.

Executions where bail has been given, &c.

SEC. 9. But if the defendant be imprisoned on execution in another cause, or upon process in the same action, or upon the surrender of such defendant in exoneration of his bail in such action, or if an execution shall have been returned unsatisfied in the cases mentioned in the last section, an execution may, in either case, issue against the body of such defendant.

Executions where defendant is imprisoned, &c.

SEC. 10. Executions, whether against the body, or against the property of any party, may be issued at the same time, to sheriffs of different counties, but no execution against the body of any party shall issue, while there is an execution against his property not returned, nor shall an execution against the property of any party be issued, while there is an execution against his body unreturned, unless by order of the court.

Like executions to sheriffs of different counties. Different executions. 9 Wend. 435.

SEC. 11. When the body of a party shall have been taken on an execution issued for that purpose, no other execution can be issued against him or his property, except in cases specially provided for by law.

When body taken in execution.

SEC. 12. But if any person who shall have been taken on an execution shall escape, he may be retaken by a new execution against

Execution after escape.

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Collection of interest on judgments.

Time of receiving to be endorsed on execution.

Executions on judgments against sheriffs.

Authority &c. of person receiving execution.

Goods bound from delivery of execution.

Priority of executions.

Priority of attachments, &c.

Priority of executions, &c., issued by justices.

Levy on current coin.

Levy on bank bills, &c.

Interest of bailor in goods pledged may be sold on execution.

his body, or an execution against his property may be issued, in the same manner as if no execution had been previously issued against the body or the property of such person.

SEC. 13. When execution shall be issued upon any judgment, interest on the amount of the judgment, from the time of entry of the same, until such amount shall be paid, shall be collected thereon.

SEC. 14. Upon the receipt of any execution, it shall be the duty of the sheriff or other officer, to endorse thereon the year, month, day, and hour of the day, when he received the same.

SEC. 15. In all cases where a judgment shall be obtained against the sheriff of any county, either alone or with others, instead of directing the execution thereon to the coroner of the county, it may be directed and delivered to any person, (except a party in interest in the suit,) who shall be designated by the court in term by an order to be entered in the minutes; or by any judge thereof, or circuit court commissioner in vacation, by an order to be endorsed on such execution.

SEC. 16. The person so designated and receiving such execution, shall, in respect to such execution, be deemed a coroner of the county, and shall be liable in all respects to all the provisions of law respecting sheriffs, so far as the same may be applicable.

SEC. 17. Whenever an execution shall be issued against the property of any person, his goods and chattels, lands and tenements levied upon by such execution, shall be bound from the time of such levy.

SEC. 18. If there be several executions issued out of a court of record, against the same defendant, that which shall have been first delivered to the officer to be executed, shall have preference, notwithstanding a levy may be first made under another execution, but if a levy and sale of any goods or chattels shall have been made under such other execution, before an actual levy under the execution first delivered, such goods or chattels shall not be levied upon or sold by virtue of such first execution.

SEC. 19. If there be one or more executions, and one or more attachments against the property of the same person, or if there be several attachments, the same rule prescribed in the last section shall prevail in determining the preference of such execution or attachment.

SEC. 20. But any execution or attachment issued out of any court, not being a court of record, if actually levied, shall have preference over any other execution or attachment issued out of any court, whether of record or not, which shall not have been previously levied.

SEC. 21. Current gold or silver coin may be taken in execution, and paid to the creditor as money collected, and shall not be exposed to sale thereon.

SEC. 22. Any bills or other evidences of debt, issued by any moneyed corporation, and circulated as money, may be taken in execution and paid to the creditor at their par value as money collected, if he will accept them, otherwise they shall be sold as other chattels.

SEC. 23. When goods or chattels shall be pledged by way of mortgage or otherwise, for the payment of money, or the performance of any contract, or agreement, the right and interest in such goods, of the person making such pledge, may be sold on execution against

him, and the purchaser shall acquire all the right and interest of the defendant, and shall be entitled to the possession of such goods and chattels, on complying with the terms and conditions of the pledge.

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8 Wend., 339.

SEC. 24. No sale of any goods or chattels shall be made by virtue of any execution, unless at least ten days previous notice of such sale shall have been given, by fastening up written or printed notices thereof, in three public places in the township where such sale is to be had, and specifying the time and place where the same is to be had.

Notice of sale of goods and chattels.

SEC. 25. All chattels real or personal, and all other goods liable to execution by the common law, may be taken and sold thereon, except as is otherwise provided by law.

What chattels may be taken on execution.

SEC. 26. When a levy shall be made upon grain while growing, or [on] any unharvested crops, by virtue of any execution, no sale thereof shall be made until the same shall be ripe or fit to be harvested, and any levy thereon by virtue of an execution issued from a county court, or by a justice of the peace, shall be continued beyond the return day thereof, if necessary, and remain in life, and the execution thereof may be completed at any time within thirty days after such grain or other unharvested crops shall be ripe or fit to be harvested.

Unharvested crops.
1840, p. 225.
1843, p. 20, § 1.

SEC. 27. The following property shall be exempt from levy and sale under any execution, or upon any other final process of a court :

Property exempt from sale on executions.

1. All spinning wheels, weaving looms, with the apparatus, and stoves put up or kept for use in any dwelling house :

2. A seat, pew or slip occupied by such person or family in any house or place of public worship :

3. All cemeteries, tombs and rights of burial, while in use as repositories of the dead :

4. All arms and accoutrements required by law to be kept by any person ; all wearing apparel of every person or family :

1842, p. 70, 71.

5. The library and school books of every individual and family, not exceeding one hundred and fifty dollars, and all family pictures :

6. To each householder, ten sheep, with their fleeces ; and the yarn or cloth manufactured from the same ; two cows, five swine, and provisions and fuel for the comfortable subsistence of such householder and family for six months :

7. To each householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars :

8. The tools, implements, materials, stock, apparatus, team, vehicle, horses, harness, or other things to enable any person to carry on the profession, trade, occupation or business, in which he is wholly or principally engaged, not exceeding in value two hundred and fifty dollars :

9. A sufficient quantity of hay, grain, feed and roots for properly keeping for six months the animals in the several subdivisions of this section exempted from execution, and any chattel mortgage, bill of sale or other lien created on any part of the property above described, except such as is mentioned in the eighth subdivision of this section, shall be void, unless such mortgage, bill of sale or lien be signed by the wife of the party making such mortgage or lien, (if he have one.)

SEC. 28. When a levy shall be made upon property of any class or species which is exempt by law from execution to a specified amount or value, the officer levying such execution may make an inventory of the whole of such property belonging to the person against whom the execution shall be issued, and cause the same to be appraised at its

Inventory and appraisal.
1843, p. 21.

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Defendant may select from inventory amount exempted.
1843, p. 21, § 22.

Fees of appraisers.
1843, p. 22, § 7.

Selection in cases where a certain number of animals, &c., are exempt.
1843, p. 21, § 6.

Sales how to be conducted.

Form of execution for sale of real estate.

If defendant die while charged in execution judgment to be certified, &c.

Adjournment of sale on execution.
1844, p. 134, § 1.

On the death of officer having execution, service may be completed by another.

cash value, by two disinterested freeholders of the township where the property may be, on oath, to be administered by him to such appraisers.

SEC. 29. Upon such inventory and appraisal being completed, the defendant in execution, or his authorized agent, may select from such inventory an amount of such property not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him.

SEC. 30. The appraisers mentioned in the twenty-second (*twenty-eighth*) section of this chapter, shall be entitled to fifty cents each for their services, and six cents per mile for traveling, in going only, for which the plaintiff in the execution shall be liable to them, and the amount of their travel and fees shall be collected upon the execution.

SEC. 31. Whenever the defendant in an execution shall have cows, sheep, swine or other animals or articles, some of which are exempt by law from sale on execution, and some of which are not so exempt, the officer may take all of such horses, cows, sheep, swine or other animals or articles into his possession, and the defendant or his authorized agent may, immediately, on being notified of the levy, select so many thereof as are exempt by law from execution, but if the defendant be absent, or neglect to make such selection on being notified, the officer shall make the same for him.

SEC. 32. No personal property shall be exposed for sale on execution, unless the same be present and within the view of those attending such sale; and it shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price.

SEC. 33. Executions, to authorize the sale of real estate, shall command the officer to whom they are directed, that of the goods and chattels of the person against whom such execution shall issue, in the county of such officer, he shall cause to be made the debt, damages or other sum of money, and costs, for which the judgment was rendered; and if sufficient goods and chattels cannot be found, that then he cause the amount of such judgment to be made of the real estate of the person against whom such judgment was rendered within such county.

SEC. 34. If any person taken in execution against his body, shall die while so charged, the judgment upon which such execution issued shall not be deemed to be extinguished, but may be certified to the judge of probate, and shall be paid in the course of administration, in like manner as if no execution had issued on such judgment.

SEC. 35. If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient, and for the interest of all persons concerned, to postpone the sale for want of purchasers or other sufficient cause, he may postpone the same from time to time until the sale shall be completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement be for a longer time than twenty-four hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

SEC. 36. When an officer shall have begun to serve an execution, and shall die, or be incapable of completing the service and return thereof, the same may be completed by any other officer who

might by law have executed the same if originally delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.

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SEC. 37. When an officer shall have begun to serve an execution issued out of any court of record, on or before the return day of such execution, he may complete the service and return thereof after such return day.

When service commenced before return day may be completed afterwards.

SEC. 38. Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company that is or may be incorporated under the authority of, or authorized to be created by any law of this state, may be taken in execution, and sold in the following manner.

Interests of stockholders in corporation may be taken in execution.

SEC. 39. The officer shall leave a copy of the execution certified by him, with the clerk, treasurer or cashier of the company, if there be any such officer, and if not, then with any officer or person who has, at the time, the custody of the books and papers of the corporation; and the property shall be considered seized on execution when such copy is left.

Copy of execution to be left with cashier, &c.

SEC. 40. The officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, shall, upon exhibiting to him the execution, be bound to give a certificate of the number of shares or amount of the interest held by such judgment debtor.

Officer of company bound to give certificate.

SEC. 41. A copy of the execution and the return thereon, certified by the officer executing the same, shall, within fourteen days after the sale, be left with the officer of the company whose duty it may be to keep a record of the transfer of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfer.

Copy of execution to be left, &c.

SEC. 42. If the shares or interest of the judgment debtor shall have been attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which shall have accrued after the levying of the attachment.

When purchaser entitled to dividends.

SEC. 43. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in cases otherwise provided by law.

How executions levied upon corporate property.

SEC. 44. If an execution shall be returned satisfied, in whole or in part, by the sale of any property which shall afterwards appear not to have belonged to the judgment debtor, or not to have been liable to execution, and if any damages shall be recovered against the judgment creditor, or the officer who served the execution, on account of the seizure and sale of the property, the court may, on the application of such judgment creditor, order a new execution to be issued on such judgment, for the amount then remaining justly and equitably due thereon.

When court may order new execution, after execution returned satisfied.

SEC. 45. No female shall be imprisoned on any process in any civil action.

No female to be imprisoned in civil action.

SEC. 46. If any officer shall unreasonably neglect to pay any money collected by him on execution, when demanded by the creditor therein, he shall be liable to such creditor in five times the lawful interest thereon from the time of the demand until it is paid.

Liability of officers for neglect to pay over moneys collected.

SEC. 47. Whenever any person shall be arrested by virtue of any

Prisoners on execution, how kept.

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execution issued upon any judgment, he shall be safely kept in secure custody, in the manner prescribed by law, at his own expense, until he shall satisfy the execution, or be discharged according to law.

Persons surrendered by bail.

SEC. 48. Every person surrendered in exoneration of his bail, shall be kept in like manner, until he shall satisfy the judgment rendered against him, or be discharged according to law.

Executions may be set off.

SEC. 49. Executions between the same parties may be set off one against another, if required by either party, in the manner, and subject to the provisions mentioned in the following sections.

How executions set off.

SEC. 50. When one of the executions is delivered to an officer to be served, the person who is the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same, or any other officer, and the officer shall apply it, as far as it will extend, to the satisfaction of the first execution, and make an endorsement of such application on each of said executions, and the balance due on the larger execution may be collected and paid in the [same] manner as if there had been no set-off.

Cases where set-off not allowed.

SEC. 51. Such set-off shall not be allowed in the following cases:

1. When the creditor in one of the executions, is not the debtor in the other in the same capacity and trust:

2. When the sum due on the first execution, shall have been lawfully, and in good faith, assigned to another person, before the creditor in the second execution became entitled to the sum due thereon:

3. When there are several creditors in one execution, and the sum due on the other is due from a part of them only:

4. When there are several debtors in one execution, and the sum due on the other is due to a part of them only:

5. Nor shall it be allowed as to so much of the first execution, as may be due to the attorney in that suit, for his taxable fees and disbursements.

When officer may require indemnity.

SEC. 52. Whenever there shall be any reasonable doubt as to the ownership by a judgment debtor, of any goods or chattels, or as to their liability to be taken upon an execution, the officer holding such execution may require of the judgment creditor sufficient security to indemnify him for taking such goods and chattels thereon; and if such security be refused, such officer shall not be liable for omitting to take such goods or chattels.

Proceeding if bidder refuse to pay.

SEC. 53. If the highest bidder for any article at any sale on execution, shall refuse to take and pay for it, the officer shall sell the same again at the same time, or within ten days thereafter, giving notice of the second sale, and he shall account for what he shall receive on the second sale, and for any damages that may be recovered of the first bidder, for any loss on the re-sale, as for so much received on the execution.

Property sold to be specified in return. Liability of officer for fraud.

SEC. 54. The officer who shall make any sale on execution, shall, in his return on the execution, specify the articles sold, and the sum for which each article or parcel was sold; and if he shall be guilty of any fraud in the sale, or in the return, he shall be liable to an action on the case, at the suit of the party injured, for five times the amount of the actual damages sustained by reason of such fraud.

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PROVISIONS CONCERNING ACTIONS AND PROCEEDINGS IN CERTAIN CASES.

SECTION 1. In actions against two or more persons jointly indebted upon any joint obligation, contract or liability, if the process issued against all the defendants shall have been duly served upon either of them, the defendant so served shall answer to the plaintiff; and in such case, the judgment, if rendered in favor of the plaintiff, shall be against all the defendants in the same manner, as if all had been served with process.

Form of judgment against joint debtors.
1839, p. 22, § 1.
6 Wend., 550.
10 do. 630.
11 do. 612.

SEC. 2. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein; but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence.

Effect of judgment as evidence.
1839, p. 22, § 1.
6 Wend., 206.

SEC. 3. Execution upon every such judgment shall be issued in form against all the defendants, [but] the attorney, clerk or court issuing the same shall endorse thereon the names of such of the defendants as were not served with the process by which the action was commenced, and shall direct such execution to be served as provided in the next section.

Form of execution, &c.

SEC. 4. Such execution shall not be served upon the person of any defendant whose name is so endorsed thereon; nor shall it be levied upon the sole propriety of any such defendant; but it may be collected of the personal property of any such defendant, and owned by him as a partner with the other defendants served, or with either or any of them.

Proceedings on execution.
1839, p. 22, § 2.

SEC. 5. Where an action against two or more persons upon any joint obligation, contract or liability, shall be commenced by the filing and service of a declaration, and it shall appear by the certificate of a sheriff, or by due proof, that the same has been served upon either of such persons, the defendant so served shall answer to the plaintiff, and the judgment in such action, if rendered in favor of the plaintiff, shall be against all of the defendants, in the same manner as if all had been served with such declaration; which judgment shall have the like effect, and execution thereon shall be issued as if process had been served on one of them.

Declaration served on joint debtor, &c. same proceedings.

1839, p. 22-3, § 3.

SEC. 6. In either of the cases mentioned in the preceding sections, the plaintiff in the judgment may sue out a writ of scire facias against the defendants therein who were not served with the process or declaration by which the suit was commenced, by which the sheriff shall be commanded to summon the parties against whom it is issued, to appear before the court in which such judgment shall have been rendered, to show, if they have any thing to say, why the plaintiff ought not to have execution against them upon such judgment, in the same manner, and with the like effect, as if they had been served with the process or declaration by which the suit was commenced.

When plaintiff may have scire facias.

1839, p. 23, § 4.

SEC. 7. If any such defendant, after being duly summoned, shall fail to appear within twenty days after the return day of the writ of scire facias, or if he shall appear and show no sufficient cause to the contrary, the court shall make an order that execution issue against such defendant in the same manner, and with the like effect, as if he

Proceedings on scire facias.

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When breaches
to be assigned.

had been served with the process or declaration by which the suit was commenced, and thereupon execution may be issued and served accordingly.

SEC. 8. When an action shall be prosecuted in any court of law, upon any bond for the breach of any condition other than for the payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written agreement, the plaintiff, in his declaration, shall assign the specific breaches for which the action is brought.

Damages in case
of trial to be as-
sessed.

SEC. 9. Upon the trial of such action, if the jury find that any assignment of such breaches is true, and that the plaintiff should recover damages therefor, they shall assess such damages, and shall specify the amount thereof in their verdict, in addition to their finding upon any other question of fact submitted to them.

Judgment on
verdict for dam-
ages.

SEC. 10. In every such action, if the plaintiff recover, the verdict of the jury, assessing the plaintiff's damages, shall be entered on the record, and judgment shall be rendered for the penalty of the bond, or for the penal sum forfeited, as in other actions of debt, together with the costs of suit, and with a further judgment that the plaintiff have execution to collect the amount of the damages so assessed by the jury; which damages shall be specified in such judgment.

Execution on
judgment; direc-
tions.

SEC. 11. The execution upon such judgment shall be in the usual form in actions of debt, but shall have endorsed thereon by the attorney, clerk or court issuing the same, a direction to the sheriff to collect the amount of the damages so assessed, which amount shall be stated, with interest thereon from the time of such assessment, and the costs of such suit.

Judgment how
affected by col-
lection of dama-
ges.

SEC. 12. If the amount so authorized to be levied, shall be collected, or the plaintiff shall be fully paid and satisfied for the same, the real and personal estate of the defendant shall be discharged from any further liability for the damages so assessed; but the judgment rendered in such action shall remain as a security for any damages that may thereafter be sustained by the further breach of any condition of such bond, or by the non-performance of any other covenant or written agreement, by the defendant, the performance of which was secured by such penal sum.

Scire facias in
case of further
breaches.

SEC. 13. Whenever such further breaches shall occur, the plaintiff, or his personal representatives, may have a scire facias upon such judgment, suggesting such breaches, against the defendant and all parties bound thereby, and commanding that they be summoned to show cause why execution should not be had upon such judgment, for the amount of the damages sustained by such further breaches.

Proceedings on
scire facias.

SEC. 14. The like proceedings to ascertain such damages, shall be had upon such writ, as are herein provided in the first instance, and if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of the damages that may have been assessed by the jury.

Judgment on
scire facias, how
affected by pay-
ment of dama-
ges.

SEC. 15. Upon payment or satisfaction of the amount of damages so found, with interest, and the costs and charges of the proceedings, the defendant and his real and personal estate shall in like manner be discharged from any liability for the damages so assessed, but such judgment shall remain as security for further breaches as herein before provided.

SEC. 16. Whenever, in any action brought according to the fore-

going provisions, the jury shall find that any assignment of breaches is not true, the same shall be a bar to any other or further suit, by scire facias or otherwise, for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

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Effect of verdict for defendant.

SEC. 17. Nothing herein contained shall prevent any person from bringing an action for the breach of any covenant or other contract, instead of suing for the penalty by which the performance of the covenant or contract may have been secured.

Suit for damages instead of penalty.

SEC. 18. Every person who shall, for vexation and trouble, or maliciously, cause or procure any other to be arrested, attached, or in any way proceeded against, by any process or proceeding at law, or in equity, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall be liable to the person so arrested, attached or proceeded against, in treble the amount of the damages and expenses which, by any verdict, shall be found to have been sustained and incurred by him; and shall be liable to the person in whose name such arrest or proceeding was had in the sum of two hundred dollars damages, and shall be deemed guilty of a misdemeanor, punishable, on conviction, by imprisonment in the county jail for a term not exceeding six months.

Suing, &c., in name of another.



SEC. 19. Every sheriff, constable, or other officer, to whom shall be directed and delivered any attachment, summons, precept to summon a jury, warrant to apprehend a witness or any other person, or any other process authorized to be issued by any judge, circuit court commissioner or justice of the peace in any special proceeding or matter before such judge, commissioner or justice, except civil suits before justices of the peace, shall execute such process as therein commanded, and for any wilful neglect so to do, may be fined by the officer issuing the same, in a sum not exceeding twenty-five dollars.

Liability of sheriff, &c., in special cases.

SEC. 20. When any person shall have been personally summoned to attend as a juror, to inquire into any matter or thing, or to hear and try any controversy, in any special proceeding or matter specified in the last section, and shall wilfully neglect to attend in pursuance of such summons, he may be fined by the officer issuing the same, in a sum not exceeding twenty-five dollars; but this section shall not extend to any case where other special provision is made by law, for punishing the default of any juror.

Penalty on jurors for default in special cases.

SEC. 21. When any sheriff, constable or other officer, who shall have summoned any jury, in the cases mentioned in the two last sections, shall be required by the officer issuing such summons, to attend such jury and take charge of them, he shall be bound to do so; and for any wilful neglect to obey such order, or for any misconduct while attending such jury, by which the rights or remedies of any party to such proceeding may be impaired or prejudiced, such sheriff, constable or other officer, shall be liable to be fined by the officer before whom such jury shall have appeared, in a sum not exceeding twenty-five dollars.

Sheriffs, &c. to attend juries in certain cases.

SEC. 22. Upon any fine being imposed in any of the cases herein before specified, notice thereof shall be given to the person fined, to the end that he may render any excuse to the officer imposing such fine, or show cause why such fine should be remitted.

Notice of fine.

SEC. 23. If no such excuse be rendered, or cause shown, within

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Fines to be certified to circuit court.

How such fines collected.

Oaths in certain cases.

Certain oaths by public officers, &c.

Suits by the people.

Costs therein how paid.

Detinue and out-lawry abolished.

Trespass on the case in cases where trespass may be brought.

Certain words actionable.

thirty days after service of such notice, and such fine shall not have been remitted by the officer imposing the same, such officer shall make a special return of the delinquency or misconduct for which such fine was imposed, with the amount thereof, to the next circuit court for the county in which said delinquent shall reside.

SEC. 24. The clerk of the court to which such return shall be made, shall deliver a copy thereof to the prosecuting attorney of the county, with copies of the minutes of fines imposed by such court, and in the same manner; which shall be collected, and may be remitted or mitigated, in the same manner as fines imposed by courts of record, upon defaulting jurors.

SEC. 25. Whenever any officer is authorized to take any sureties or bail, he shall be authorized to administer an oath to every person who shall be offered as such bail or surety, to ascertain his sufficiency.

SEC. 26. Whenever any application shall be made to the commissioner of the land office, the acting commissioner of internal improvement, or to any other public officer, or board of officers, to do any act in an official capacity, and such officer or board shall require information or proof, to enable him or them to decide on the propriety of doing such act, such information or proof may be required to be given by affidavit, and such officer, or any member of such board, may administer all necessary oaths for that purpose.

SEC. 27. Every suit or proceeding in a civil cause instituted in the name of the people of this state, by any public officer duly authorized for that purpose, shall be subject to all the provisions of law respecting similar suits or proceedings, when instituted by or in the name of any citizen, except where provision is or shall be otherwise expressly made by statute; and in such suits and proceedings, the people of this state shall be liable to be non-suited, and to have judgment of non-pros or of discontinuance entered against them, in the same cases, in like manner and with the same effect, as in suits brought by citizens, except that no execution shall issue thereon.

SEC. 28. Whenever costs shall be adjudged against the people of this state, in any civil suit or proceeding instituted by any officer duly authorized for that purpose, it shall be the duty of the auditor general to draw on the treasurer for the amount thereof, upon the production of an authenticated copy of the record of judgment, or of the order adjudging such costs, with a taxed bill thereof, and upon the certificate of the attorney general that such suit or proceeding was duly instituted, as by law required.

SEC. 29. The action of detinue is hereby abolished, and all process and proceedings to outlaw any defendant in a civil action, are also hereby abolished.

SEC. 30. Where by the wrongful act of any person, an injury is produced, either to the person, personal property, or rights of another, or to his servant, child or wife, for which an action of trespass may by law be brought, an action of trespass on the case may be brought to recover damages for such injury, whether it was wilful, or accompanied by force or not; and whether such injury was a direct and immediate consequence from such wrongful act, or whether it was consequential and indirect.

SEC. 31. Words imputing to any female a want of chastity, shall be deemed to be actionable in themselves, and shall subject the person who shall utter and publish such words, to an action on the case

for slander, in the same manner as the uttering and publishing of words imputing the commission of a criminal offence.

TITLE XXII.
CHAPTER 107

SEC. 32. Whenever a suggestion shall be made upon the record, or in any stage of the proceedings in any cause, which the adverse party shall have a right to controvert, a copy of such suggestion shall be served upon the adverse party or his attorney, in the same manner as other pleadings, and such party may plead thereto, according to the practice of the court, in the same manner, and within the same time, as to a declaration.

Certain suggestions to be served.

SEC. 33. If an issue of fact be joined upon any such suggestion, the same shall be tried, and judgment rendered thereon, as in (on) other issues.

Trial of issues thereon, &c.

SEC. 34. The party making such suggestion may be non-suited, and may have judgment of non-pros, or discontinuance entered against him, for the same causes, and in the same cases as in suits at law.

Other proceedings on suggestion.

SEC. 35. When any action at law shall be commenced, for the recovery of a sum certain, or which may be reduced to a certainty by calculation, or for a casual or involuntary trespass or injury, the defendant, in any stage of the proceedings before trial in such causes, or before such damages shall have been assessed, or before judgment rendered in an action of debt, may tender to the plaintiff or his attorney, any sum of money which such defendant shall conceive sufficient amends for the injury done, for which such action or proceeding was instituted, or sufficient to pay the plaintiff's demand, together with the costs of such action or proceeding, to the time of making such tender.

Cases for tender of debt or damages.

SEC. 36. If it shall appear upon the trial of the cause, or upon the assessment of damages, that the amount so tendered was sufficient to pay the plaintiff's demand, or was a sufficient amends for the injury done, and the costs of the suit or proceeding up to the time of such tender, the plaintiff shall not be entitled to recover or collect any interest on such demand from the time of such tender, or any costs incurred subsequent to that time, but shall be liable to the defendant for the costs incurred by him subsequent to such time.

Effect if tender be sufficient.

SEC. 37. When there shall be a motion or other proceeding in any court of record in which it shall be necessary for either party to have the deposition of any witness who shall have refused voluntarily to make his deposition, the court may direct a commission to be issued to one or more persons, inhabitants of the county in which such witness resides, to take his testimony.

Testimony on motion, &c., in courts of record.

SEC. 38. Such witness may be subpoenaed to attend and testify before such commissioners, in the same manner as before referees, and with the like effect; and obedience to such subpoena shall be enforced in the same manner.

Testimony of witness how procured.

SEC. 39. When any jury shall be impannelled to try any issue, to make any inquiry, or to assess any damages, if they cannot agree after being kept together for such time as shall be deemed reasonable by the court or officer before whom they shall have appeared and been impannelled, such court or officer may discharge them, and issue a precept for a new jury, or order another jury to be drawn, as the case may require; and the same proceedings shall be had before such new jury as might have been had before the jury so discharged.

Discharging juries upon disagreement.

SEC. 40. It shall not be necessary to have any particular number of days intervene between the teste and return day of any process, except in cases otherwise expressly provided by law.

Process; time between teste and return.

**TITLE XXII.
CHAPTER 107.**

Certain bonds,
when sufficient.

SEC. 41. Whenever a bond is or shall be required by law to be given by any person, in order to entitle him to any right or privilege conferred by law, or to commence any proceeding, it shall not be necessary for such bond to conform in all respects to the form thereof prescribed by any statute, but the same shall be deemed sufficient if it conform thereto substantially, and do not vary in any matter to the prejudice of the rights of the party to whom or for whose benefit such bond shall have been given.

Amending defects in bond, and substituting new one.

SEC. 42. Whenever such bond shall be defective in any respect, the court, officer or body who would be authorized to receive the same, or to entertain any proceedings in consequence of such bond, if the same had been perfect, may, on the application of all the obligors therein, amend the same in any respect, or may, on the application of the person required to give such bond, allow a new one to be substituted in the place thereof, bearing date at the time when such bond was required to be given, and such bond shall thereupon be deemed valid from the time of the execution of such defective bond.

When prisoners to be charged in execution.

SEC. 43. When any defendant, at the time judgment shall be rendered against him, in any court of record, shall be in the custody of a sheriff or other officer, either upon process in the suit in which such judgment shall have been rendered, or upon being surrendered in discharge of his bail in such suit, the plaintiff in such judgment shall charge such defendant in execution thereon, within three months after the last day of the term next following that at which such judgment shall have been obtained.

Id.

SEC. 44. When any defendant shall be in custody upon a surrender in discharge of his bail, made after a judgment obtained against him, and such bail shall be thereupon exonerated, the plaintiff in such judgment shall charge such defendant in execution thereon, within three months after such surrender, or if an execution against the property of such defendant shall have been issued, within three months after the return day of such execution.

When prisoner discharged by supersedeas.

SEC. 45. If any plaintiff shall neglect so to charge any defendant in execution, as required by the two last preceding sections, such defendant may be discharged from custody by a supersedeas to be allowed by any judge of the court in which such judgment shall have been obtained, unless good cause to the contrary be shown; and after being so discharged, such defendant shall not be liable to be arrested upon any execution which shall be issued upon such judgment.

Submission of cause upon a case made by the parties.
1840, p. 19, § 5.

SEC. 46. The parties to any civil cause depending in any court of record, may agree upon a case containing the facts relating thereto, and submit the same to said court; and the court shall thereupon determine and render judgment in such cause, in the same manner as upon a special verdict finding such facts.

Notice of justification in slander or libel, no proof of malice.

SEC. 47. If the defendant in any action for slander or for publishing a libel, shall give notice in his justification, that the words spoken or published were true, such notice, though not maintained by the evidence, shall not in any case be of itself proof of the malice charged in the declaration.

Entitling declarations, &c.

SEC. 48. It shall not be necessary to entitle any declaration or other pleading, of any term of the court, or of any day in term or vacation, nor shall it be necessary to mention the name of the state, in the statement of the venue in any case.

SEC. 49. In all cases arising upon contracts under seal, or upon judgments, when an action of covenant or of debt may be maintained, an action of assumpsit may be brought and maintained, in the same manner in all respects, as upon contracts without seal; and no bond, deed of conveyance or other contract in writing, signed by any party, his agent or attorney, shall be deemed invalid for want of a seal or scroll affixed thereto by such party.

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CHAPTER 107.

Assumpsit may be maintained on sealed instruments.

SEC. 50. It shall not be necessary in any action on the case for seduction hereafter to be brought, to allege in the declaration, or to prove on the trial, any loss of service in consequence of such seduction; but if the female seduced be a minor at the time of the seduction, the action may be brought by her father, mother, or guardian; and if such female be of full age, the action may be brought by her father, or any other relative who shall be authorized by her to bring the same.

In action for seduction, allegation of loss of service unnecessary, &c.

SEC. 51. It shall not be necessary in any such action to allege or prove that the person seduced was the servant of the plaintiff, but instead thereof, it shall be sufficient to set forth in the declaration the relationship of such person to the plaintiff, or that such person is the ward of the plaintiff, as the case may be.

Proof that person seduced was servant of plaintiff unnecessary.

SEC. 52. The two last sections shall not be so construed as to prevent any person entitled to the services of the person seduced, from maintaining an action for the loss of service or other damage sustained by him in consequence of the seduction.

Construction of two last sections.

TITLE XXIII.

OF SUITS RELATING TO REAL PROPERTY.

- Chapter 108. Of the Action of Ejectment.
 Chapter 109. Of the Partition of Lands owned by several Persons.
 Chapter 110. Of Waste.
 Chapter 111. Of Trespass on Lands.
 Chapter 112. Of Actions for Private Nuisances.
 Chapter 113. General Provisions concerning Actions relating to Real Estate.

CHAPTER 108.

OF THE ACTION OF EJECTMENT.

- Ejectment retained.** SECTION 1. The action of ejectment is retained, and may be brought in the cases and in the manner heretofore accustomed, subject to the provisions hereinafter contained.
- Extended to other cases.** SEC. 2. The action of ejectment may also be brought,
 10 Wend., 104. 1. In the same cases in which a writ of right may now be brought by law to recover lands, tenements, or hereditaments, and by any person claiming an estate therein, in fee or for life, either as heir, devisee or purchaser :
- Dower.** 2. By any widow entitled to dower, or by a woman so entitled and
 9 Wend., 309. her husband, after the expiration of six months from the time her
 10 do. 531. right accrued, to recover her dower of any lands, tenements or hereditaments.
- Who to be plaintiff.** SEC. 3. No person can recover in ejectment, unless he has at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.
- Who to be defendant.** SEC. 4. If the premises for which the action is brought, are actually occupied by any person, such actual occupant shall be named a defendant in the declaration ; if they are not so occupied, the action must be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein at the commencement of the suit ; and all persons claiming any title to the premises adverse to that claimed by the plaintiff, may in all cases be made defendants in such action.
- How commenced &c.** SEC. 5. The suit shall be commenced by the filing of a declaration, entering a rule to plead, and serving of a copy of the declaration and notice of the rule to plead, in the same manner as in personal actions, except as hereinafter provided ; and in such declaration the names of

the real claimants shall be inserted as plaintiffs, and all the former provisions of law concerning lessors of a plaintiff shall apply to such plaintiffs.

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SEC. 6. The use of fictions (*fictitious*) names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statement of any lease or demise to the plaintiff, and of an ejectment by a casual or nominal ejector, are abolished.

Fictitious parties
demises, &c.,
abolished.

SEC. 7. It shall be sufficient for the plaintiff to aver in his declaration, that on some day therein to be specified, and which shall be after his title or right accrued, he was possessed of the premises in question, describing them as hereinafter provided, and being so possessed thereof that the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage, any nominal sum the plaintiff shall think proper to state.

Contents of declaration.
10 Wend., 414.
12 do. 170.

SEC. 8. In such declaration the premises claimed shall be described with such convenient certainty, by setting forth the section or part of a section. township and range, or the number of the lot, or otherwise, that from such description possession of the premises claimed may be delivered.

Premises claimed,
how described.

SEC. 9. If such plaintiff claims an undivided share or interest in any premises, he shall state the same particularly in such declaration.

Undivided
shares.

SEC. 10. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower as widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life, or for the life of another, or for a term of years, or otherwise, specifying such lives, or the duration of such term.

Estate of plaintiff.
9 Wend., 309.
11 do. 594.
12 do. 139.

SEC. 11. In any case other than where the action is brought for the recovery of dower, the declaration may contain several counts, and several parties may be named as plaintiffs, jointly in one count, and separately in others.

Several counts
and plaintiffs.
7 Wend., 470.

SEC. 12. All the provisions of law relating to the endorsement of declarations as security for costs, and the liability of endorsers in cases of personal actions, commenced by declaration, shall be applicable to the action of ejectment.

Security for
costs.

SEC. 13. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein, who shall be in the occupation thereof, personally, or by leaving the same with some person of proper age, at the dwelling house of such defendant, if he be absent.

Service of declaration, &c., on
occupant.

SEC. 14. If any defendant named in such declaration shall not occupy the premises claimed, the declaration and notice shall be served on such defendant personally, or if he cannot be found, by leaving the same with some person of proper age, at the residence of such defendant.

Service of declaration, &c., when
premises unoccupied.

SEC. 15. But when the declaration shall have been served in any other manner than upon the defendant personally, no default for not pleading shall be entered without the special order of the court.

Special order of
court when necessary.
12 Wend., 180.

SEC. 16. Upon filing the certificate of the sheriff, or an affidavit of the due service of a copy of the declaration and notice of the rule

When and how
appearance and
default may be
entered.

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to plead personally on the defendant, his appearance shall be entered; and in case he shall neglect to plead within the time prescribed by such rule, his default for not pleading may be entered in like manner as in personal actions.

Authority of
plaintiff's attor-
ney.
10 Wend., 568.

SEC. 17. A defendant in ejectment may at any time before pleading, apply to the court, or to any judge thereof, or circuit court commissioner in vacation, to compel the attorney for the plaintiff to produce to such court or officer, his authority for commencing the action in the name of any plaintiff therein.

Affidavit to be
made.

SEC. 18. Such application shall be accompanied by an affidavit of the defendant, that he has not been served with proof in any way, of the authority of the attorney to use the names of the plaintiffs stated in the declaration.

Order on applica-
tion.

SEC. 19. Upon such application, the court or officer shall grant an order requiring the production of such authority, and shall stay all proceedings in the action, until the same be produced.

Evidence of au-
thority.

SEC. 20. Any written request of such plaintiff or his agent, to commence such action, or any written recognition of the authority of the attorney to commence the same, or any verbal authority, duly proved by the affidavit of such attorney or other competent witness, shall be sufficient presumptive evidence of such authority.

When applica-
tion to be dis-
missed and de-
fendant to pay
costs, &c.

SEC. 21. If it shall appear that previous to such application by any defendant, he was served with the affidavit of the plaintiff's attorney, showing his authority to commence such action, such application shall be dismissed, and such defendant shall be liable for the costs of resisting such application, the payment of which may be compelled by attachment as in other cases, which may be issued upon proof of disobedience to the order of the court or officer directing the payment of such costs.

Pleadings, &c.

SEC. 22. The defendant may demur to the declaration as in personal actions; or he shall plead the general issue only, which shall be the same as in personal actions, and the filing and service of such plea or demurrer shall be deemed an appearance in the cause, and upon such plea the defendant may give the same matter in evidence, and the same proceedings shall be had, as upon the plea of not guilty in the present action of ejectment.

Evidence under
plea.

SEC. 23. Upon such plea, the defendant may give in evidence any matter which, if pleaded in the present writ of right or action of dower, would bar the action of the plaintiff.

Right to posses-
sion sufficient, &c.

SEC. 24. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises, at the time of the commencement of the suit, as heir, devisee, purchaser or otherwise.

Lease, entry and
ouster, &c.

SEC. 25. It shall not be necessary on the trial for the defendant to confess, nor the plaintiff to prove, lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect, any of the rules of evidence now in force, in regard to the maintenance and defence of the action.

Ouster to be
proved in certain
cases.
10 Wend., 414,
531.

SEC. 26. If the action be brought by one or more tenants in common, or joint tenants, against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove on the trial of the cause, that the defendant actually ousted

such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant.

SEC. 27. If the action be brought against several defendants, and a joint possession or claim of title of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

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CHAPTER 108.

Verdict upon
joint possession,
&c.

SEC. 28. When the action is against several defendants, if it appear on the trial that any of them at the commencement of the suit occupied or claimed distinct parcels in severalty or jointly, and that other defendants possessed or claimed other parcels, in severalty or jointly, the plaintiff shall elect at the trial, and before the testimony shall be deemed closed, against which he will proceed; and a verdict shall thereupon be rendered for the defendants not proceeded against.

Several and distinct
possessions.

SEC. 29. In the following cases the verdict shall be rendered as follows:

Verdict, how
rendered in cor-
tain cases.

1. If it be shown on trial that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally:

2. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant:

3. If the verdict be for any plaintiffs, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto, at the commencement of the action:

4. If the verdict be for all the premises claimed, as specified in the declaration, it shall in that respect be for such premises generally:

5. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part as the same shall have been proved, with the same certainty hereinbefore required in the declaration, in the description of the premises claimed:

11 Wend., 594.

6. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest; and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required:

7. The verdict shall also specify the estate or right which shall have been established on the trial, by the plaintiff in whose favor it shall be rendered, whether such estate be in fee, or for his own life, or for the life of another, stating such lives, or whether it be a term for years, or otherwise, and specifying the duration of such term.

SEC. 30. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be rendered that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed, and that as to the premises claimed, the defendant go thereof without day.

Expiration of
plaintiff's title
before trial.

SEC. 31. The action of ejectment shall not be abated by the death of any plaintiff, or of one of the several defendants after issue and before verdict or judgment; but the same proceedings may be had as in other actions, to substitute the names of the executors or administrators, or of those who may succeed to the title of the plaintiff so dying, in which case the issue shall be tried as between the original

Abatement of
suit by death.
10 Wend., 540.

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CHAPTER 108.

Form of judgment.

parties; and in case of the death of a defendant, the cause shall proceed against the other defendants.

SEC. 32. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be, that the plaintiff recover the possession of the premises according to the verdict of the jury, if there was such verdict; or if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

Form of writ of possession.

SEC. 33. The plaintiff recovering such judgment shall be entitled to a writ of possession, which shall be substantially in the following form:

"In the name of the people of the State of Michigan:
To the sheriff the county of

Whereas, A. B. has lately, in our circuit court for the county of _____, by the judgment of said court, recovered against C. D. the following described premises, to wit: (describing the premises recovered with like certainty as above provided,) which said premises have been, and are still unjustly withheld from the said A. B. by the said C. D. whereof he is convicted, as appears to us of record; and forasmuch as it is adjudged in the said court that the said A. B. have execution upon said judgment against the said C. D. according to the force, form and effect of his said recovery; therefore, we command you, that without delay, you deliver to the said A. B. possession of the said premises so recovered, with the appurtenances; and that you certify to our said court, at &c., on &c., in what manner you shall have executed this writ. (If there be costs to be collected, the proper clause may here be inserted.)

Witness, &c."

Costs how collected of plaintiff.

SEC. 34. Upon a judgment against the plaintiff, or one or more plaintiffs, in cases where they shall be liable for costs, execution for the collection of the same shall be issued, as upon judgments in personal actions.

Effect of judgment on verdict.

SEC. 35. Every judgment in the action of ejectment, rendered upon a verdict, shall be conclusive as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter contained.

New trial, how granted.

SEC. 36. The court in which such judgment shall be rendered, at any time within three years thereafter, upon the application of the party against whom the same was rendered, his heirs, executors, administrators or assigns, and upon payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause; and the court upon subsequent application made within two years after the rendering of the second judgment in said cause, if satisfied that justice will be thereby promoted, and the rights of the parties more satisfactorily ascertained and established, may vacate the judgment and grant another new trial: but no more than two new trials shall be granted under this section.

Effect of judgment by default; new trial.

SEC. 37. Every judgment in ejectment rendered by default, shall, from and after three years from the time of rendering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action; but within five years after the rendering of such judgment, on the application of the defendant, his heirs, executors, administrators or as-

signs, the court may vacate such judgment and grant a new trial, if such court shall be satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established.

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SEC. 38. The circuit court may make such rules in relation to staying proceedings upon the judgment, on application being made for a new trial under the two last sections, as such court may deem necessary to protect the rights of the parties thereto.

Rules in relation to staying proceedings.
1841, p. 53, § 4.

SEC. 39. If the defendant in an action of ejectment, at the time of docketing the judgment therein by default, be either,

Time of disability not to be included.

1. Within the age of twenty-one years : or,
2. Insane : or,
3. Imprisoned on any criminal charge, or in execution upon conviction of a criminal offence, for any term less than for life : or,
4. A married woman :

The time during which such disability shall continue, shall not be deemed any portion of the said three years ; but any such person may bring an action for the recovery of such premises after that time, and within three years after such disability shall be removed, but not after that period.

SEC. 40. If the person entitled to commence such action, shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right or action so to him accrued, his heirs, executors or administrators may commence such action, after the time above limited for that purpose, and within three years after his death.

Death of person during continuance of disability.

SEC. 41. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment, as herein provided ; and if the defendant recover on any new trial hereby authorized, he shall be entitled to a writ of possession, in the same manner as if he were plaintiff.

Possession after recovery on new trial.

SEC. 42. Upon any new trial granted as herein provided, the defendant may show any matters in bar of a recovery, which he might show to entitle him to the possession of the premises if he were plaintiff in the action.

Evidence on new trial.

SEC. 43. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages for rents and profits of the premises recovered ; but if such action be brought for the recovery of dower, the plaintiff shall be entitled to recover such damages only in the cases, and to the extent prescribed in the preceding sixty-sixth chapter.

Damages to be recovered.

SEC. 44. The plaintiff seeking to recover such damages, shall, within one year after the docketing of the judgment, make and file a suggestion of such claim, which shall be entered, with the proceedings thereon, upon the record of such judgment, or be attached thereto, as a continuation of the same.

Mode of recovery ; suggestion.

SEC. 45. Such suggestion shall be substantially in the same form as is now in use for a declaration in an action of assumpsit for use and occupation, as near as may be, and may be against the defendants liable for such rents and profits, omitting those not so liable ; and a rule to plead thereto shall be entered, and a copy thereof, with a notice of such rule, shall be served on the defendants named therein, in the same manner as in cases of declarations in personal actions.

Form of suggestion, &c.

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CHAPTER 108.

Pleadings of defendant, &c.

SEC. 46. Such defendants may plead to such suggestion, and give notice of any special matters in bar of such claim, except such as were or might have been controverted in such action of ejectment, in the same manner as in personal actions; and such defendants may show on the trial, in bar or in mitigation of the damages claimed by the plaintiff, a recovery of (*by*) such defendants, or by any other person, of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment.

Trial of issues, &c.

SEC. 47. If any issue of fact be joined on such suggestion, it shall be tried as in other causes, and if such issue be found for the plaintiff, the same jury shall assess his damages, to the amount of the mesne profits received by the defendant, since he entered into the possession of the premises, subject to the restrictions hereinafter contained.

Facts to be established by plaintiff.

SEC. 48. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert the time when such defendant entered into the possession of the premises; the time during which he enjoyed the mesne profits thereof; and the value of such profits; and the record of the recovery in the action of ejectment shall not be evidence of such time.

Set-off by defendant.
4 Cowen, 168.

SEC. 49. On such trial, the defendant shall have the same right to set off permanent improvements made on the premises, to the amount of the plaintiff's claim, as is now allowed by law; and in estimating the plaintiff's damages, the value of the use by the defendant, of any improvements made by him, or purchased by him in good faith from any person from whom he derives color of title thereto, shall not be allowed to the plaintiff.

In what cases defendant to be allowed value of buildings, &c.

SEC. 50. When the defendant in ejectment, or any person through whom he claims title, shall have been in actual possession of the premises for six successive years, or more, after this chapter shall take effect as a law, and before the commencement of the action, and claiming title either by virtue of, or in opposition to a sale made by any executor, administrator or guardian, or the auditor general or any county treasurer, or other person or body corporate authorized by any statute to make sale of land for non-payment of taxes, such defendant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him, or any person through whom he claims title.

Estimating value of improvements and value of premises.

SEC. 51. In all cases of such possession of the premises by the defendant, he may file a claim, in writing, to compensation for buildings and improvements on the premises, and a request for an estimation by the jury, of the increased value of the premises by reason thereof; and the plaintiff may file a request in writing that the jury would also estimate what would have been the value of the premises, at the time of trial, if no buildings had been erected, or improvements made, or waste committed, both which estimates it shall be their duty to make, and in their verdict state to the court.

Plaintiff may abandon premises and take judgment for value. Such judgment to be a lien.

SEC. 52. If, after the rendition of the verdict, the plaintiff shall at the same or next subsequent term of the court, make his election on record, to abandon the premises to the defendant at the value estimated by the jury, then judgment shall be rendered against the defendant for the sum so estimated by the jury, with costs of suit, which judgment shall be a lien upon the premises in question, and execution may issue on such judgment, and be levied upon such premises, and the same may be sold by virtue thereof in the same manner, and with the like effect, as any other real estate of the defendant.

Sec. 53. If the plaintiff shall not elect to abandon the premises to the defendant, he shall, within one year after the rendition of the judgment for recovery of the premises, pay to the clerk of the court for the use of the defendant, such sum as shall have been assessed for the buildings and improvements, with interest thereon; and no writ of possession shall issue on the judgment rendered on the verdict, nor any new action be sustained for the land until such sum is paid, and a default to pay to said clerk as aforesaid, shall be deemed an abandonment of all claim of title to the premises, and be a bar to the recovery thereof.

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Plaintiff may pay value of improvements within one year—effect of neglect.

Sec. 54. The plaintiff shall not be entitled to recover the rents and profits of the land so recovered, for any longer term than six years immediately preceding the time when such suggestion shall be served on the defendant.

Extent of recovery.

Sec. 55. If no issue of fact be joined on such suggestion, and judgment be rendered thereon against the defendant by default, on demurrer, or otherwise, the value of such mesne profits shall be assessed, and the plaintiff's damages ascertained in the same manner as in other cases.

Assessing damages on default, &c.

Sec. 56. Upon such assessment, the plaintiff shall be required to establish the same matters herein before required, in the case of an issue being joined, and the defendant may in like manner, controvert the same, and make any set-off to which he shall be entitled, and the jury shall assess the damages in the same manner.

Proceedings on assessing damages.

Sec. 57. Upon the return of an inquisition of damages, or upon the verdict of the jury in case of an issue being joined, the court shall render judgment as in actions of assumpsit, for use and occupation, which shall have the like effect in all respects.

Judgment.

Sec. 58. If the plaintiff in ejectment shall have died after issue joined, or judgment therein, his personal representatives may enter a suggestion of such death, and of the granting of letters testamentary or of administration to them, and may suggest their claim to the mesne profits of the premises recovered, in the same manner and with the like effect as the deceased might have done if still living; and the same proceedings in all respects shall be had thereon.

Proceedings to recover mesne profits on death of plaintiff.

Sec. 59. If an action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in the manner following:

Proceedings on recovery of dower, not previously admeasured.

1. Upon the filing of the record of judgment, the court, on the motion of the plaintiff, shall appoint three discreet and disinterested freeholders, commissioners, for the purpose of making admeasurement of the dower of the plaintiff, out of the lands described in the record; and the commissioners so appointed shall proceed in like manner, possess the like powers, and be subject to the like obligations as commissioners appointed by the judge of probate to set off dower:

2. The commissioners shall make a report of their doings to the court in writing, as soon as may be after their appointment, which report shall be confirmed by such court, unless good cause to the contrary be shown, and shall be entered at large in the minutes of such court:

3. Upon the confirmation of the report of the commissioners, a writ of possession shall be issued to the sheriff of the proper county,

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Costs of admea-
surement of
dower.

Ejectment by
mortgagee, &c.
1843, p. 139,
11 Wend., 538.

describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

Sec. 60. The costs and expenses incurred in such admeasurement, shall be subject to the same provisions as in cases of admeasurement of dower by commissioners appointed by the judge of probate.

Sec. 61. No action of ejectment shall hereafter be maintained by a mortgagee, or his assigns or representatives, for the recovery of the mortgaged premises, until the title thereto shall have become absolute upon a foreclosure of the mortgage.

CHAPTER 109.

OF THE PARTITION OF LANDS OWNED BY SEVERAL PERSONS.

Who may have
partition.

SECTION 1. All persons holding lands as joint tenants or tenants in common, may have partition thereof, in the manner provided in this chapter.

Suits how insti-
tuted.

Sec. 2. Any one or more of the persons so holding lands, may institute a suit in the circuit court for the county in which the lands lie, by a bill in equity for a division and partition thereof according to the respective rights of the parties interested therein, and for a sale of such premises, if it shall appear that a partition thereof cannot be made without great prejudice to the owners.

By whom suit
may be maintain-
ed.

Sec. 3. Such suit may be maintained by any person who has an estate in possession in the lands of which partition is sought, but not by one who has only an estate therein in remainder or reversion.

Bill to be verified
and what to set
forth.

Sec. 4. The bill for a partition or sale of any such lands, shall be verified by oath, and shall particularly describe the premises sought to be divided, and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the complainant, including the interest of any tenant for years, for life, by the curtesy or in dower, and the persons entitled to the reversion, remainder or inheritance after the termination of any particular estate therein, and every person who, by any contingency contained in any devise, grant or otherwise, may be or become, entitled to any beneficial interest in the premises.

Who may be
made parties.

Sec. 5. Every person having any such interest as aforesaid, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, may be made a party to such suit.

Unknown parties
and uncertain in-
terests.

Sec. 6. In case any one or more of such parties, or the share or quantity of interest of any of the parties be unknown to the complainant, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, so that such parties cannot be named, the same shall be set forth in the bill.

Creditors having
lien need not be
made parties in
first instance.

Sec. 7. It shall not be necessary in the first instance, to make any creditor having a lien on the premises in question, or any part thereof, by judgment, decree, mortgage or otherwise, a party to the proceedings, nor shall the partition of the premises alter, affect or impair

the lien of any such creditor, except in the cases provided for in the next section.

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SEC. 8. When the lien is on the undivided interest or estate of any of the parties, such lien, if partition be made of the premises, shall thereafter be a charge only on the share assigned to such party, and such share shall be first charged with its just proportion of the costs of the proceedings in partition, in preference to any such lien.

Effect of partition upon lien on undivided share

SEC. 9. But the complainants may, at their election, make every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage or otherwise, a party to the proceedings; and in such case the bill shall set forth the nature of every such lien or incumbrance.

Creditor having specific lien may be made a party.

SEC. 10. Upon filing a bill in the circuit court for the partition or sale of any lands pursuant to the provisions of this chapter, the defendants, or such of them as reside in this state and can be found therein, shall be served with a subpoena to appear and answer the bill, and the same may be taken as confessed, according to the practice in courts of equity.

Subpoena to appear and answer.

SEC. 11. If any parties having an interest in such lands are unknown, or if either of the known parties reside out of this state, or cannot be found therein, and such facts be made to appear to the court by affidavit, an order may be made by the court containing a sufficient description of the premises whereof partition is sought, and requiring all parties interested to appear and answer the bill by a day in such order to be specified, which order shall be served personally, or shall be published once in each week successively in such paper as may be designated in such order, and for such time as the court shall designate, not exceeding three months.

Unknown and non-resident parties how notified.

SEC. 12. The proof of personal service or [of] the publication of such order shall authorize an order of the court for taking the bill as confessed against all such unknown parties, and persons not resident in this state, or not found therein, as shall not appear and answer by the day mentioned in the order, or on such further day as the court may appoint; and all such unknown parties as may appear, shall be entitled to be made parties to the suit, and the bill may be amended accordingly.

Order to take bill as confessed against unknown parties.

SEC. 13. The general guardians residing in this state, of all minors and other persons under guardianship, who should be parties to such proceedings for partition, upon giving bond as hereinafter directed, shall represent their respective wards therein, whether such wards shall reside in or out of this state, and the court shall appoint guardians for all such minors who shall be interested in the premises, as have no general guardians in this state, for the special purpose of taking charge of the interests of such minors, in relation to the proceedings; and the acts of all such guardians of minors, or others under guardianship, shall be binding on their respective wards, and shall be as valid as if done by them respectively when of full age, or under no legal incapacity.

Guardians for minors, &c.

SEC. 14. Every such guardian shall give bond to the people of this state, to be filed with the clerk of the court, in such penalty, and with such surety as the court shall direct; conditioned for the faithful performance of the trust reposed in such guardian, and to render a just and true account of his guardianship in all courts and places when

Bond to be given by guardian.

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CHAPTER 109.

On failure of guardian to give bond, clerk to be appointed.

thereunto required, and for the observance of the orders of the court in relation to the said trust.

SEC. 15. When a bill shall be filed for the partition or sale of any lands in pursuance of this chapter, and any of the defendants therein are minors, or other persons under guardianship, and the general guardian, or person appointed guardian by the court, shall fail to give the security hereinbefore required, it shall be the duty of the court, on the application of the complainants, to appoint the clerk of said court, the guardian of such minors or other persons, for the purpose of such partition, and to dispense with the securities hereinbefore required.

When issue of fact to be tried by jury.

SEC. 16. Any defendant may deny the joint tenancy, or tenancy in common, of any co-defendant; and whenever the court shall deem it necessary, for the purpose of determining the rights of any of the parties in the premises of which partition shall be sought, that any issue of fact between the parties, or any of them, should be tried by a jury, such court may award a feigned issue for that purpose, which shall be tried by a jury, and the verdict thereon be returned as in other cases, and with the like effect.

Court may permit bill and proceedings to be amended.

SEC. 17. Either before or after the trial of such issue, the court may permit the bill and all subsequent proceedings to be amended so as to represent truly the rights claimed by any party; or so as to make any person a defendant who shall have appeared in the course of the proceedings to be interested in the premises, and who might originally have been made a defendant if his interest had then existed or been known; but no person shall be so made a defendant unless by his consent, without twenty days' notice of the motion to that effect being personally served on him, or published once in each week successively for one month in such paper as the court may direct.

Rights of parties affected by amendment.

SEC. 18. After any such amendment, any party whose rights are affected thereby, and who has not had an opportunity to sustain his claim, shall have the right to answer the bill, or to put in a further answer thereto, and to maintain his claim, as the circumstances of the case may render proper.

Reference to take proof of title of complainants.

SEC. 19. If the bill shall be taken as confessed by any of the defendants, whether known or unknown, the court shall order a reference to a master to take proof of the title of the complainants, and report the same to the court: and the complainants shall exhibit before such master, proof of their title, and an abstract of the conveyances by which the same is held.

Rights of parties how ascertained, and decree thereon.
1 Paige, 27.

SEC. 20. Upon the hearing of the cause, the court shall ascertain from the proofs so taken, in case of the bill being taken as confessed; or from the bill and answer, or pleadings and proofs, if the defendants appear and answer, and shall declare the rights, titles and interests of the parties to such proceedings, complainants as well as defendants, so far as the same shall have appeared; and shall determine the rights of the said parties in such lands, and shall decree that partition be made between such of them as shall have any right therein, according to such rights.

Decree in case the right of some of the parties do not appear.

SEC. 21. If upon the hearing of the cause, the part or interest of any parties who shall not have appeared and answered the bill, whether known or unknown, in and to such premises, shall not have appeared by the proofs in the cause, then the court shall decree that partition be made, so far as the rights or interests of the parties who

are known, and who have appeared in the cause, have been ascertained, and the residue of the premises shall remain for the parties whose interests have not been ascertained, subject to division between them at any future time.

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SEC. 22. Upon making a decree for partition as provided in the two last preceding sections, an order shall be entered referring it to a master to inquire into the situation of the premises, and to report whether such premises, or any part of them are so circumstanced that a partition and division thereof amongst the parties interested cannot be made without great prejudice to the owners.

Reference to inquire into situation of premises.

SEC. 23. If upon the coming in of the report of the master, the court shall be satisfied that partition of the premises between the parties interested therein can be made without prejudice to the owners, such court shall, by an order to be entered in its minutes, appoint three discreet and disinterested freeholders, commissioners, to make the partition so decreed, according to the respective rights and interests of the parties, as the same were ascertained and determined by such court, and in such order the court shall designate the part or shares, if any, which shall remain undivided, for the owners whose interests shall be unknown or not ascertained.

When and how commissioners appointed to make partition.

SEC. 24. If the persons so appointed commissioners, or either of them shall die, resign, or neglect to serve, the court may, from time to time, appoint others in their places.

Vacancies.

SEC. 25. The commissioners, before proceeding to the execution of their duties, shall severally be sworn before any officer authorized to administer oaths, honestly and impartially to execute the trust reposed in them, and to make partition as directed by the court; which oath shall be filed with the clerk of the court, on or before the coming in of the report of such commissioner (*commissioners*).

Oath of commissioners.

SEC. 26. In making partition, the commissioners shall divide the said real estate, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered, according to the respective rights and interests of the parties so adjudged and decreed by the court, designating the several shares and portions by posts, stones or other permanent monuments; and they may, if necessary, employ a surveyor with the necessary assistants, to aid them therein.

How partition to be made.

SEC. 27. The commissioners shall make an ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust, and describing the land divided, and the shares allotted to each party, with convenient certainty, and the items of their charges.

Report of commissioners.

SEC. 28. All the commissioners must meet together in the performance of any of their duties, but the acts of a majority so met, shall be valid.

All to meet, &c.

SEC. 29. The expenses of the commissioners, including the expenses of a surveyor and his assistants, when they shall be employed, shall be ascertained and allowed by the court; and the amount thereof, together with such compensation as shall be allowed to the commissioners by the court for their services, shall be paid by the complainants, and shall be allowed to them as part of the costs to be taxed.

Fees and expenses.

SEC. 30. On good cause shown, the court may set aside the report, and commit the case to the same, or appoint new commissioners, as

Setting aside report, &c.

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CHAPTER 109.**

Decree on confirmation of report.
11 Wend., 647.

often as may be necessary, who shall proceed in like manner as herein before directed.

SEC. 31. Upon the confirmation of the report of any commissioners by the court, a decree shall thereupon be entered, that such partition be firm and effectual forever, and such decree shall be binding and conclusive,

1. On all parties named therein, and their legal representatives, who shall, at the time, have any interest in the premises divided, as owners in fee, or as tenants for years, or as entitled to the reversion, remainder or inheritance of such premises, after the termination of any particular estate therein; or who, by any contingency contained in any will or grant, or otherwise, may be or become entitled to any beneficial interest in the premises; or who shall have any interest in any undivided share of the premises, as tenant for years, for life, by the curtesy, or in dower:

2. On all persons interested in the premises, who may be unknown, to whom notice shall have been given by personal service or by publishing the same as is herein before directed: and,

3. On all other persons claiming from such parties or persons, or either of them.

Persons and cases not affected.

SEC. 32. But such decree and partition shall not affect any tenants, or persons having claims as tenants, in dower, by the curtesy or for life, to the whole of the premises which shall be the subject of such partition; nor shall any such decree and partition preclude any person, except such as are specified in the last preceding section, from claiming any title to the premises in question, or from controverting the title or interest of the parties, between whom such partition shall be made.

When sale may be ordered.

SEC. 33. If the master to whom reference shall be made as herein before provided, shall report to the court that the lands or tenements of which division and partition is sought, are so situated, or that any distinct tract, lot or portion thereof, is so situated, that a partition and division thereof amongst the persons interested therein, cannot be made without great prejudice to the owners; and if the court shall be satisfied that such report is just and correct, the court may thereupon make an order that the master sell the premises so situated, at public auction, to the highest bidder.

Order to direct terms of credit, &c.

SEC. 34. The court shall direct, in such order, the terms of credit which may be allowed, for any portions of the purchase money of which it shall think proper to direct the investment, and for such portions of such purchase money, as are required by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, any infants, any parties out of the state, or any tenants for life, in dower, or by the curtesy.

Credits, how secured.

SEC. 35. The portions of the purchase money for which credit shall be allowed, shall always be secured at interest, by a mortgage of the premises sold, by a bond of the purchaser, and by such other security as the court shall prescribe.

Separate securities.

SEC. 36. The master may take separate mortgages and other securities, for such convenient shares or portions of the purchase money, as are directed by the court to be invested, in the name of the clerk of the court in whose office the original bill for a partition was filed, and his successors in office; and for such shares as any known owner of full age shall desire to have so invested, in the name of such owner.

SEC. 37. Upon such sales being confirmed, as hereinafter mentioned, the said master shall deliver such mortgages and other securities, to the clerk of the court, or to the known owners whose shares were so invested.

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To whom to be delivered.

SEC. 38. Before making any order for the sale of the said premises, where the creditors having specific liens shall not have been made parties, the court shall direct the complainant to amend his bill, by making every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage or otherwise, a party to the proceedings.

Creditors having specific liens to be made parties before order for sale.

SEC. 39. If it shall appear by the proceedings on such bill, or by such report, that there are any existing incumbrances upon the estate or interest in the premises, of any party named in the proceedings in the suit, the court shall, in the order of sale, direct the master to bring into court and pay to the clerk, the portion of the moneys arising from the sale of the estate and interest of such party, after deducting the portion of the costs, charges and expenses to which it shall be liable.

Certain moneys to be brought in to court.

SEC. 40. Such party may apply to the court to order such moneys, or such part thereof as he shall claim, to be paid to him; which application shall be accompanied,

Application for moneys brought in.

1. By his own affidavit, stating the true amount actually due on each incumbrance, the owner of such incumbrance, and his residence, as far as known to such party:

2. By proof by affidavit, of the due service of a notice on each owner of any incumbrance, of the intention to make such application, at least fourteen days previously. If such owner reside in this state, such notice shall be served personally, or if he be absent from his residence, by leaving a copy there, with some person of his household of proper age. If such owner reside out of this state, such notice may be served on him personally, thirty days previously, or by publishing the same in such paper as the court may direct, three weeks successively, once in each week.

SEC. 41. Upon such application and proof of notice, the court shall proceed to hear the proofs and allegations of the parties; and if any question of fact shall arise, which, in the opinion of the court, cannot be satisfactorily determined without a trial by jury, the court shall award a feigned issue, to be tried as in other cases, and the costs of such trial shall be paid by the party failing, which payment shall be enforced by attachment, as in other cases.

Proceedings on application.

SEC. 42. When the amount of existing incumbrances shall have been ascertained, the court shall proceed to order a distribution of the moneys so brought into and remaining in court, among the several creditors having such incumbrances, according to the priority thereof respectively.

Distribution of moneys among creditors.

SEC. 43. The clerk of the court by whom any such incumbrance shall be paid off, shall procure satisfaction thereof to be acknowledged, in the form required by law, and shall cause such incumbrance to be duly satisfied or canceled of record, and shall defray the expenses thereof, out of the portion of the moneys in court belonging to the party by whom such incumbrance was payable.

Clerk to procure discharge of incumbrances.

SEC. 44. The proceedings to ascertain and settle the amount of incumbrances as herein provided, shall not affect any other party in such suit for partition, nor delay the paying over or investing the moneys

Other parties not to be delayed.

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Sale of dower or
other life estate
in premises.

It.
1 Paige, 472.

Payment to own-
er of life estate,
&c., with his as-
sent.

Proceedings if
consent be not
given.

Proportions to be
invested.

In case of dower.

Estate for life.

Rights of un-
known owners to
be protected by
court.

Notice of sale by
master.

to or for the benefit of any party, upon whose estate in the premises there shall not appear to be any existing incumbrances.

SEC. 45. Whenever the estate of any tenant in dower, or by the curtesy, or for life, in the whole or any part or share of the premises in question, has been admitted by the parties, or ascertained by the court, to be existing at the time of the order for such sale, and the person entitled to such estate has been made a party to the proceedings, the court shall first consider and determine under all the circumstances of the case, whether such estate ought to be excepted from such sale, or whether the same should be sold, and in making such determination, regard shall be had to the interests of all the parties.

SEC. 46. If a sale of the premises, including such estate shall be ordered, the estate and interest of every such tenant or person, shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises free and discharged from all claims by virtue of any such estate or interest, whether the same be to any undivided share of a joint tenant, or tenant in common, or to the whole or any part of the premises sold.

SEC. 47. Upon such sale being made of any such interest or estate, the court shall direct the payment of such sum in gross, out of the proceeds thereof, to the person entitled to such estate in dower, tenancy by the curtesy, or tenancy for life, as shall be deemed upon the principles of law applicable to annuities, a reasonable satisfaction for such estate or interest, and which the person so entitled shall consent to accept in lieu thereof, by an instrument under seal, duly acknowledged or proved in the manner that deeds are required to be acknowledged or proved, to entitle them to be recorded.

SEC. 48. In case no such consent is given at or before the coming in of the report of sale by the master, then the court shall ascertain and determine what proportion of the proceeds of such sale, after deducting all expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate or interest in dower, by the curtesy or for life, and shall order the same to be brought into court for that purpose.

SEC. 49. The proportions of the proceeds of such sale to be invested, shall be ascertained and determined, in the several cases, as follows :

1. If an estate in dower shall have been included in such order of sale, its proportion shall be one-third of the proceeds of the sale of the premises, or of the sale of the undivided share in such premises, upon which such claim of dower existed :

2. If an estate by the curtesy, or other estate for life, shall be included in the order of sale, its proportion shall be the whole proceeds of the sale of the premises, or of the sale of the undivided share thereof, in which such estate shall be :

And in all cases, the proportion of the expenses of the proceedings shall be deducted from the proceeds of such sale.

SEC. 50. If the persons entitled to any such estate in dower, by the curtesy, or for life, be unknown, the court shall take order for the protection of the rights of such persons, in the same manner, as far as may be, as if they were known and had appeared.

SEC. 51. The master shall give notice of any sale to be made by him, for the same time, and in the same manner as is required by law on sales of real estate by sheriffs on execution.

SEC. 52. The terms of such sale shall be made known at the time, and if the premises consist of distinct lots, tracts or parcels, they shall be sold separately.

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How conducted.

SEC. 53. No such master, nor any person for his benefit, shall be interested in the purchase, nor directly or indirectly purchase, any of the premises sold; nor shall any guardian of any infant party in such suit, purchase, or be interested in the purchase of, any lands, being the subject of such suit, except for the benefit or in behalf of such infant; and all sales contrary to the provisions of this section shall be void.

Master and guardians not to purchase.

SEC. 54. After completing such sale, the master shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of such purchaser, and the price bid by him, which report shall be filed in the court.

Report of sale.

SEC. 55. If such sales be approved and confirmed by the court, an order shall be entered directing the master to execute conveyances pursuant to such sales; which such master shall be authorized to do upon the entry of such order.

Order for conveyances.

SEC. 56. Such conveyances so executed, shall be recorded in the county where the premises are situated; and shall be a bar, both in law and equity, against all persons interested in any way, who shall have been named as parties in the said proceedings, and against all such parties as were unknown, if notice of the order to appear and answer shall have been given by such publication or service of notice as is herein before directed; and against all other persons claiming from such parties, or either of them.

Conveyances to be recorded; their effect.

SEC. 57. Such conveyances shall also be a bar against all persons having specific liens on any undivided share or interest therein, who shall have been made parties to the proceedings; but no creditor having any such specific lien shall be affected by such sale or conveyance, unless he shall have been made a party to the proceedings.

Effect of conveyances upon rights of creditors.
4 Paige, 442.

SEC. 58. The costs and expenses of the proceedings shall be deducted from the proceeds of every sale made by the master, and shall be by him in the first instance, paid to the complainants or their solicitor.

Costs and expenses of proceedings.

SEC. 59. The proceeds of every sale, after deducting the costs, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises; and the shares of such of the said parties as are of full age, shall be paid to them or their legal representatives by the master, or shall be brought into court for their use.

Distribution of proceeds of sale among parties.

SEC. 60. When any of such known parties are infants, the court may in its discretion, direct the shares of such infant to be paid over to the general guardian, or to be invested in permanent securities at interest, in the name and for the benefit of such infant.

Shares of known infants.

SEC. 61. Where any of the parties whose interests have been sold are absent from the state, without legal representatives in this state, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in permanent securities at interest, for the benefit of such parties, until claimed by them or their legal representatives.

Shares of unknown and absent owners.

SEC. 62. Where the proceeds of a sale belonging to any tenant in dower, or by the curtesy, or for life, shall be brought into court as hereinbefore directed, the court shall direct the same to be invested in

Tenants in dower or for life, &c.

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Security to re-
fund.

In what names
securities to be
taken.

Clerk to receive
and apply mo-
neys and render
account.

Investment, how
made, &c.

Suits on securi-
ties.

Costs of partition
how assessed and
collected.

Sale of premises
of unknown ow-
ner valid.

Costs against
complainants on
dismissal of bill,
&c.

permanent securities at interest, so that such interest shall annually be paid to the parties entitled to such estate, during their lives respectively.

SEC. 63. The court may, in its discretion, require all or any of the parties, before they shall receive any share of the moneys arising from such sales, to give security to the satisfaction of such court, to refund the said share with interest thereon, in case it shall thereafter appear that such party was not entitled thereto.

SEC. 64. When any security is directed to be taken by the court, or any investment to be made, or any security shall be taken by a master on the sale of any real estate as hereinbefore directed, except where provision shall be made for taking the same in the name of any known owner, the bonds, mortgages, or other evidences thereof shall be taken in the name of the clerk of the court in whose office the original bill was filed, and his successors in office, who shall hold the same by virtue of his office, and shall deliver them to his successor.

SEC. 65. Such clerk shall receive the interest or principal of any sums as they become due, and apply or re-invest the same, according to the circumstances of the case, as the court shall direct; and shall, once in every year, render to the court an account in writing, and on oath, of all moneys received by him, and of the application thereof.

SEC. 66. All investments, or re-investments, under the provisions of this chapter, shall be made on bond and mortgage upon unincumbered real estate, of at least double the value of such investment, exclusive of buildings, or in other equivalent security; and no such security, bond, mortgage or other evidence of such investment, shall be discharged, transferred or impaired, by any act of the clerk, without the order of the court entered in the minutes thereof.

SEC. 67. Any person interested in such investment, may, with the leave of the court, prosecute the same in the name of the existing clerk, and no suit shall be abated by the death, removal from office, or resignation of the clerk to whom such securities or evidences were executed, or of any of his successors.

SEC. 68. When a decree confirming the partition made by any commissioners, shall be entered as provided in this chapter, the court shall also adjudge and decree that each of the parties concerned therein, other than the complainants, pay to such complainants, a proportion of the costs and charges of the proceedings, to be ascertained by the court, according to the respective rights of the parties, and the proportion of such costs and charges assessed upon the unknown owners, to be chargeable on the part remaining undivided; and upon such decree execution may issue as in other cases, and may be levied on the property of the parties respectively charged with such costs, and upon any share or part of the premises allotted on any such division to any owner unknown, or not named, and upon every portion remaining undivided, for the proportion adjudged to be paid by such owners, or chargeable to the part remaining undivided.

SEC. 69. A sale of the premises of such owner unknown, upon such execution, shall be as valid as if such owner had been named in the proceedings, and in such execution.

SEC. 70. If a bill for partition shall be dismissed, or the suit shall be discontinued, the complainants shall pay costs, to be collected as in other cases.

SEC. 71. Any of the parties to a suit for the partition or sale of any premises under the provisions of this chapter, and any party interested in the premises, though not named in the proceedings, may, jointly or separately, and without the consent of any co-complainant or co-defendant, appeal from any decree or order of the said court, upon any such proceedings, within the same time, and under the like regulations, as in other cases.

TITLE XXIII.
CHAPTER 109.

Appeal.

SEC. 72. Whenever it shall appear satisfactorily to the court, by due proof, or on report of a master, that any infant holds real estate in joint tenancy, or in common, or in any other manner which would authorize his being made a party to a suit in partition, and that the interest of such infant, or of any other person concerned therein, requires that partition of such estate should be made, such court may direct and authorize the general guardian of such infant to agree to a division thereof, or to a sale of such premises, or of such part thereof, as in the opinion of the court shall be incapable of partition, or as shall be most for the interest of such infant to be sold.

Partition or sale of estates of infants by guardians.

SEC. 73. Such guardian shall report to the court, on oath, the partition or sale so made by him, and if the same be approved and confirmed by the court, an order shall be entered authorizing such guardian to execute conveyances of the right of such infant to such part of the said estate as shall have been sold, to the purchaser thereof; or to execute releases of the rights of such infant to such part of the said estate, as in the division falls to the shares of the other joint tenants, or tenants in common.

Report of guardian and order for conveyances.

SEC. 74. Such deeds shall be as valid and effectual to convey the share and interest of such infant, as if the same had been executed and duly acknowledged by such infant after arriving at full age; and in case of the sale of any part of such estate, the infant shall be deemed a ward of the court, and such order shall be taken as the court may direct, for security, (*securing*) investing and applying the proceeds of the sale, and for requiring security from the guardian for that purpose.

Effect of deeds; infants wards of court.

SEC. 75. Whenever such infant shall be a married woman, the court may, upon petition, appoint her husband as her guardian, and in case of the appointment of the husband, the provisions of the three last preceding sections shall apply to such husband.

If infant a married woman, husband to be guardian.

SEC. 76. Whenever it shall appear to the court, on the application of the guardian of any idiot, lunatic, spendthrift, or person mentally incapable of managing his affairs, holding any estate in joint tenancy or in common, or in any other manner to authorize his being made a party to a suit in partition, that the interest of such idiot, lunatic, or other person aforesaid, or of any of the parties interested in such estate, requires a partition thereof, it shall be referred to a master in chancery to inquire into and report upon the circumstances.

Partition by guardians of lunatics, &c.

SEC. 77. Upon the coming in of the report, and a hearing and examination of the matter, the court may authorize such guardian to agree to a partition of such estate, and to execute releases of the right of such idiot, lunatic, or other person as aforesaid, in and to the shares of such estate falling to the other joint tenants, or tenants in common.

Releases, when to be authorized.

SEC. 78. Such releases shall be as valid and effectual to convey the share of such idiot, lunatic or other person as aforesaid, as if the same had been executed by them respectively, when of sound mind and

Effect of releases.

**TITLE XXIII.
CHAPTER 110.**

Partition when
state is interest-
ed.

understanding, and not subject to guardianship, and for a valuable consideration.

SEC. 79. When any lands shall be held by the people of this state, and by individuals as tenants in common, proceedings for the partition thereof may be had against the people of this state in the circuit court, in the same manner as against individuals, and the like orders and decrees shall be had therein, and the proportion of the costs and expenses of such partition, adjudged to be paid by the people of this state, shall be certified by the attorney general, and paid out of the state treasury on the warrant of the auditor general.

Service of sub-
pœna &c., on at-
torney general.

SEC. 80. The subpœna to answer, and all notices required to be served in other cases, shall be served on the attorney general, who shall appear in behalf of the state, and attend to its interests.

Claims barred by
limitations, &c.

SEC. 81. The authority given by this chapter to proceed for the partition of real estate, shall not authorise the revival or prosecution of any claim to lands which would, or otherwise might be barred by the statute of limitations, or by the acquiescence of any party having any such claim.

Compensation
for equality of
partition.

SEC. 82. Whenever partition shall be decreed by any circuit court, if it shall appear that it cannot be made equal between the parties, without prejudice to the rights and interests of some of them, the court may decree compensation to be made by one party to the other, for equality of partition, according to the equity of the case.

CHAPTER 110.

OF WASTE.

Who liable to
action for waste.

SECTION 1. If any guardian, or any tenant by the curtesy, tenant in dower, or for term of life or years, or the assigns of any such tenant, shall commit or suffer any waste during their several terms or estates, of the houses, gardens, orchards, lands or woods, or of any other thing belonging to the tenements so held, without having a lawful license in writing so to do, they shall respectively be liable to an action on the case for such waste.

When tenant lia-
ble after granting
his estate.

SEC. 2. In case any such tenant shall let or grant his estate, and still retain possession thereof, and commit waste, the party entitled to the reversion of the tenements, may maintain his action on the case for such waste against such tenant.

Joint tenants and
tenants in com-
mon.

SEC. 3. If one joint tenant, or tenant in common, shall commit waste of the estate held in joint tenancy or in common, he shall be subject to an action on the case for such waste, at the suit of his co-tenant or tenants.

Suit by heirs.

SEC. 4. An heir, whether of full age or not, after coming into possession of the inheritance, may maintain an action on the case for waste done in the time of his ancestor, as well as in his own time, unless a recovery shall have been had therefor by the executor or administrator of such ancestor.

By whom action
may be brought.

SEC. 5. Such action may be brought by the person having the next immediate estate, in fee, or for life or years in the premises in question; or by any person who has the remainder or reversion in fee, or

for life, after an intervening estate for life or years, and each of them shall recover damages according to his estate in the premises.

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CHAPTER 110.

SEC. 6. If the plaintiff in such action prevail therein, he shall have judgment for double the amount of damages found by the jury.

Judgment.

SEC. 7. After the commencement of any action on the case for waste, or of any action for the recovery of land, or of the possession of land, the defendant shall not make any waste of the land in demand or premises in question, during the pendency of the suit; and if such defendant shall commit any waste thereon, or shall threaten or make preparations to commit waste thereon, the court in which the suit is pending, or any justice of the supreme court or circuit court commissioner, either in term time or vacation, shall have power, on the application of the plaintiff, to make an order restraining the defendant from the commission of any waste, or further waste thereon.

Staying the commission of waste by defendants.

SEC. 8. If any person shall commit, or threaten, or make preparations to commit any waste on any real estate which shall be attached, or levied upon by execution in any civil action, the court from which such execution or attachment shall have issued, or any one of the justices of the supreme court, or a circuit court commissioner, may, on the application of the plaintiff, either in term time or vacation, make an order restraining such person from committing any waste, or further waste thereon.

Staying waste after attachment or execution levied.

SEC. 9. Whenever any lands or tenements shall be sold by virtue of an execution, issued upon any judgment or decree, the person to whom a conveyance may be executed by the sheriff pursuant to such sale, may maintain an action on the case for waste against any person, for any waste committed by such person on the premises after such sale.

Action for waste of land sold by execution.

SEC. 10. But no person lawfully entitled to the possession of any premises so sold, shall be liable to any such action for doing either of the acts authorized in the next section.

Exception.

SEC. 11. Any person entitled to the possession of lands or tenements sold under execution, may, until the expiration of fifteen months from the time of such sale, use and enjoy the same, as follows, without being deemed guilty of waste :

Certain acts not waste.

1. He may, in all cases, use and enjoy the premises sold, in like manner, and for the like purposes, in and for which they were used and applied prior to such sale, doing no permanent injury to the freehold :

2. If the premises sold were buildings, or any other erections, he may make necessary repairs thereto, but he shall make no alterations in the form or structure thereof :

3. If the premises sold were land, he may use and improve the same, in the ordinary course of husbandry ; but he shall not be entitled to any crops growing thereon at the expiration of the said fifteen months :

4. He may apply any wood or timber on such land to the necessary reparation of any fences, buildings or erections which may have been thereon at the time of the sale :

5. If the land sold is actually occupied by such person, he may take necessary firewood therefrom for the use of his family.

SEC. 12. If the person against whom any order shall be made to restrain waste, as provided in this chapter, shall, after the service of a copy thereof, commit any waste in violation of the said order, he shall

Violation of order, how punished.

**TITLE XXIII.
CHAPTER 111.**

Notice to show
cause.

Form of commit-
ment.

How warrant to
be executed.

When defendant
may be discharg-
ed.

Equity jurisdic-
tion of circuit
court.

be liable to be proceeded against and punished in the same manner as for a violation of an injunction to stay waste, according to the proceedings of courts of equity ; and for that purpose the court or officer making such order, shall possess full equity power and jurisdiction.

SEC. 13. When complaint shall be made of the violation of any such order to restrain waste, the court or officer may order notice to be given to the person complained of, to show cause why he should not be committed.

SEC. 14. Upon satisfactory proof of such violation, such court or officer shall issue a warrant to the sheriff of the county, reciting such order and the violation thereof, and thereby commanding such sheriff to commit such person to close confinement, for such term of time, not more than one year, as shall be deemed expedient.

SEC. 15. The sheriff shall execute such warrant accordingly, and shall commit the person named therein, without allowing him the liberties of the jail.

SEC. 16. Such warrant may be superseded, and such person may be discharged by the court or officer committing him, upon receiving a bond, in such penalty, and with such sufficient sureties, as such court or officer may approve, to the person applying for the warrant of commitment, conditioned that such prisoner shall not commit any waste on such premises ; which bond shall be delivered to such applicant for his use, and to be prosecuted by him for any breach of the condition thereof.

SEC. 17. The circuit court for each county shall have equity jurisdiction of all matters concerning waste, in which there is not a plain, adequate and complete remedy at law ; and may grant injunctions to stay or prevent waste ; and whenever it shall be necessary or proper to have any fact tried by a jury, such court may award a feigned issue for that purpose, as in other cases.

CHAPTER 111.

OF TRESPASSES ON LANDS.

Treble damages
in certain cases.
8 J. R., 344.
2 Wend., 247.
8 Cowen, 115.

Exceptions of
certain cases.

SECTION 1. Every person who shall cut down or carry off, any wood, underwood, trees or timber, or shall girdle or otherwise de spoil or injure any trees on the land of any other person, without the leave of the owner thereof, or on the lands or commons of any city, township, village or other corporation, without license therefor given, shall be liable to the owner of such land, or to such corporation, in three times the amount of damages which shall be assessed therefor in an action of trespass, by a jury, or by a justice of the peace in the cases provided by law.

SEC. 2. If, upon the trial of any such action, it shall appear that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own ; or that such wood, trees or timber, were taken for the purpose of making or repairing any public road or bridge ; judgment shall be given to recover only the single damages assessed.

SEC. 3. If any person shall be ejected or put out of any lands or tenements in a forcible and unlawful manner, or being put out, be afterwards holden and kept out by force, or with strong hand, he shall be entitled to maintain an action of trespass, and shall recover therein three times the amount of damages assessed by the jury or a justice of the peace in the cases provided by law.

TITLE XXIII.
CHAPTER 112.

Forcible entry
or detainer.

CHAPTER 112.

OF ACTIONS FOR PRIVATE NUISANCES.

SECTION 1. In actions on the case for a private nuisance, when the plaintiff prevails, he shall, in addition to the usual judgment for damages and costs, also have judgment that the nuisance be abated and removed, unless the justice holding the circuit court at which any issue of fact joined therein shall be tried, shall certify in the minutes of such trial, that the abatement thereof is unnecessary.

Judgment in action for nuisance.
11 Pick., 452.

SEC. 2. In case of a judgment that the nuisance be abated and removed, the plaintiff shall have execution in the common form for his damages and costs, and a separate warrant to the proper officer, requiring him to abate and remove the nuisance, at the expense of the defendant, in like manner as public and common nuisances are abated and removed.

Execution and warrant in case of judgment that nuisance be abated.

SEC. 3. The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding six months, to give him an opportunity to remove the nuisance, upon his giving satisfactory security to do so within the time specified in the order.

How warrant may be stayed.

SEC. 4. The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts; and the officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand; and if the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.

Expense of removing nuisance on warrant, how collected.

SEC. 5. The circuit court for any county shall have equity jurisdiction in all matters concerning nuisances, where there is not a plain, adequate and complete remedy at law, and may grant injunctions to stay or prevent nuisances.

Equity jurisdiction in case of nuisance, &c.



TITLE XXIII.
CHAPTER 113.

CHAPTER 113.

GENERAL PROVISIONS CONCERNING ACTIONS RELATING TO REAL ESTATE.

Reversioners, &c,
when to be ad-
mitted to defend.

SECTION 1. If any tenant for life, in dower, or by curtesy, or any tenant for years, be impleaded, and the person to whom the reversion or remainder appertains, shall come into court before any trial shall be had in such action, or before judgment by default therein, and pray to be received to defend his right, he shall be received for that purpose, and shall be permitted to plead to the action, upon such terms as the court may deem just.

When to sue af-
ter default of ten-
ant.

SEC. 2. If any tenant for life or years, make default or give up any lands demanded, so that judgment be given on such default or surrender, the person to whom the reversion or remainder of such lands appertains, may, after the termination of the estate of such tenant, have an action of ejectment to recover the same lands.

When wife to be
admitted to de-
fend.

SEC. 3. When a husband and wife shall be impleaded, if the husband absent himself, or will not defend the rights of the wife, if she apply before judgment, she shall be admitted by the court to defend without her husband.

Wife may reco-
ver after default
of husband.

SEC. 4. If the husband lose by default, any land which was the right of his wife, the wife, after the death of her husband, may have an action of ejectment to recover the same, and the judgment by default shall be no bar to such action.

Certain recover-
ies void as to re-
versioners, &c.

SEC. 5. All recoveries had by agreement of parties, or by fraud, against any tenant for life, in dower or by the curtesy, of any lands, tenements or hereditaments, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain, and as against their heirs, unless the appearance of the person having such reversion or remainder shall have been duly entered in the court where such recovery shall be had.

Feigned recover-
ies.

SEC. 6. No execution shall be avoided by means of any feigned recovery, but all persons entitled to have execution of the lands, tenements or hereditaments, shall have the like means to avoid and falsify the same recoveries, as a tenant of the freehold, who was neither party nor privy to such recovery, has by the course of the common law.

Rights of lessees
for years.

SEC. 7. A lessee for years may falsify for his term only, recoveries, in the same manner as a tenant of the freehold, who was neither party nor privy to the recovery, may do by the course of the common law; and such lessees, and their personal representatives and assigns, notwithstanding any recoveries that may be so falsified, shall hold their terms according to their demises, as if such recovery had not been had.

Rights of parties
recovering.

SEC. 8. After any recovery had, the recoverers, their heirs and assigns, shall have the like remedies against any lessees for years, their representatives and assigns, for any rents or services reserved, coming due after such recoveries, and also like actions for waste done after such recoveries, as the lessors might have had, if such recoveries had not been made.

Joint and several
actions by heirs,
&c.

SEC. 9. When any person shall die, leaving heirs either in the same or in different degrees; and where several persons shall be, in any other way, entitled to real estate as tenants in common, or as joint tenants, they may bring a joint action for the recovery thereof, or may bring several actions for their respective shares or interests.

SEC. 10. Actions relating to real property, shall not be delayed, nor shall the remedy of any plaintiff be superseded, by reason of the infancy of any defendant therein; but guardians to defend the rights of infant defendants, shall be appointed as in personal actions; and in all such actions against an infant, if he do not procure the appointment of a guardian within the time required for his appearance therein, the plaintiff may proceed to have such guardian appointed as in personal actions.

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CHAPTER 113.
Guardians for infant defendants.

SEC. 11. Whenever the court in which any action relating to real property shall be pending, shall be satisfied that any survey of any premises in the possession of either party, or of any boundary line between the lands of the parties, or between the lands of either of them and the lands of other persons, is necessary or expedient to enable either party to declare, plead or prepare for trial, or for any other proceeding in such action, it may, by rule of court, upon the application of either party, order that such party have leave to make such survey.

Order for survey of lands.

SEC. 12. Such order shall specify the premises or boundary line to be surveyed, by a description as definite as may be; and a copy of the same shall be served previous to such entry, on the owner or occupant of the premises upon which it may be necessary to enter, to make such survey.

Copy of order to be served.

SEC. 13. The party obtaining such order, his necessary surveyors, assistants and agents, may enter upon any premises necessary for the purpose of making such survey, and may there make the same, after having served a copy or such rule, as hereinbefore directed; and for so doing, no person acting under such order shall be liable to any action of trespass or other action; but every such person shall be responsible in an action on the case, for any unnecessary injury caused by him.

Authority of party under order.

SEC. 14. No imparlance, voucher, aid-prayer or receipt, shall be allowed; but whenever any action shall be brought against any tenant, to recover the land held by him, or the possession of such land, the landlord of such tenant, and any person having any privity of estate with such tenant, or with such landlord, in the premises in question, or in any part thereof, may be made defendant with such tenant, in case he shall appear for that purpose.

Imparlance, &c. abolished. Landlords, &c. may defend.
10 Wend., 554.

SEC. 15. Whenever any action for the recovery of any lands or tenements, or for the recovery of the possession thereof shall be commenced against any person in possession of the premises in question, or in the receipt of the profits thereof, such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

Alienation by defendants.

SEC. 16. If the defendant in any action for the recovery of land, or the possession of land, shall alien the land in question, pending the suit, and shall have no property whereof the damages for the issues and profits of such land recovered against him may be levied, every person to whose hands such land shall have come, shall be liable to an action for such damages for the time that he shall have possessed the premises.

Liability of purchasers during suit.

SEC. 17. Whenever a writ of possession shall be issued upon a judgment in any action relating to real property, the plaintiff may include in the same process, an execution against the property of the

Execution for costs or damages.

**TITLE XXIII.
CHAPTER 113.**

Practice in ac-
tions relating to
real estate.

defendant, to collect the costs or damages, which may be due, in the same cases in which he would be authorized to issue such execution separately.

SEC. 18. The practice in actions relating to real estate, shall be the same in all respects, as in personal actions, except where otherwise specially provided by law; and rules to plead may be entered, and may be enlarged, and proceedings may be stayed in the like cases, and all the provisions of law respecting pleadings, process, records and judgments, in personal actions, shall, so far as the nature of such actions will admit, apply to actions relating to real estate.

Certain actions
and process abo-
lished.

SEC. 19. All writs of right, writs of dower, writs of entry, and writs of assize, all fines and common recoveries, and all other real actions known to the common law, not enumerated and retained in this title, and all writs and other process heretofore used in real actions, which are not specially retained in this title, are abolished.

TITLE XXIV.

TITLE XXIV.
CHAPTER 114.

OF PROCEEDINGS IN SPECIAL CASES.

- Chapter 114. Of Proceedings against Debtors by Attachment.
- Chapter 115. Of Proceedings by and against Infants.
- Chapter 116. Of Proceedings by and against Corporations in Courts of Law.
- Chapter 117. Of Proceedings against Corporations in Chancery.
- Chapter 118. Of the Voluntary Dissolution of Corporations, and of the Abatement of Suits by and against them.
- Chapter 119. Of Proceedings by and against Public Bodies, having certain Corporate Powers, and by and against Officers representing them.
- Chapter 120. Of Suits against Sheriffs and other Officers, on their Official Bonds.
- Chapter 121. Of Proceedings as for Contempts, to enforce Civil Remedies, and to Protect the Rights of Parties in Civil Actions.
- Chapter 122. Of Proceedings for the Collection of Demands against Ships, Boats and Vessels.
- Chapter 123. Of Proceedings to recover the Possession of Land in certain cases.
- Chapter 124. Of the Action of Replevin.
- Chapter 125. Of Distraining and Replevying Beasts.
- Chapter 126. Of the Lien of Mechanics and others.
- Chapter 127. Of the Disposition of Unclaimed Property in certain cases.
- Chapter 128. Of the Collection of Penalties, Forfeitures and Fines, and of Forfeited Recognizances.
- Chapter 129. Of Arbitrations.
- Chapter 130. Of the Foreclosure of Mortgages by Advertisement.
- Chapter 131. Of the Draining of Swamps and other Low Lands.
- Chapter 132. Of the Support and Regulation of Mills.
- Chapter 133. Of Proceedings to compel the Delivery of Books and Papers by Public Officers, to their Successors.

CHAPTER 114.

OF PROCEEDINGS AGAINST DEBTORS BY ATTACHMENT.

SECTION 1. Any creditor shall be entitled to proceed by attachment in the circuit court for the proper county, against the property of his debtor, in the cases, upon the conditions, and in the manner provided in this chapter.

In what cases
creditor may proceed by attachment.

**TITLE XXIV.
CHAPTER 114.**

Contents of affidavit to be annexed to writ.
1839, p. 228, § 36.
1842, p. 118, § 1.

SEC. 2. Before any such writ of attachment shall be executed, the plaintiff, or some person in his behalf, shall make and annex thereto an affidavit, stating that the defendant therein is indebted to the plaintiff, and specifying the amount of such indebtedness as near as may be, over and above all legal set-offs, and that the same is due upon contract express or implied, or upon judgment, and containing a further statement that the deponent knows, or has good reason to believe, either,

1. That the defendant has absconded, or is about to abscond from this state, or that he is concealed therein to the injury of his creditors : or,

2. That the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal any of his property, with intent to defraud his creditors : or,

3. That the defendant has removed, or is about to remove, any of his property out of this state, with intent to defraud his creditors : or,

4. That he fraudulently contracted the debt, or incurred the obligation respecting which the suit is brought : or,

5. That the defendant is not a resident of this state, and has not resided therein for three months immediately preceding the time of making such affidavit : or,

6. That the defendant is a foreign corporation.

Indorsement of writ.

SEC. 3. Such writ of attachment shall be indorsed in the same cases, and in the same manner, as original writs are required by law to be indorsed, by some person as security for costs, and with the like effect.

Writ not to issue unless one hundred dollars due.

SEC. 4. No writ of attachment shall be issued under the provisions of this chapter, unless the amount stated in such affidavit as due to the plaintiff, over and above all legal set-offs, shall exceed the sum of one hundred dollars.

Contents of writ.

SEC. 5. Such writ shall command the sheriff, or other officer to whom it may be directed, to attach so much of the lands, tenements, goods, chattels, moneys and effects of the defendant, not exempt from execution, wheresoever the same may be found within the county, as will be sufficient to satisfy the plaintiff's demand, and safely keep the same, to satisfy any judgment that may be recovered by the plaintiff in such attachment, and also to summon the defendant, if to be found within this state, to appear before the circuit court, at the time and place to be specified in such writ, to answer the plaintiff; and such writ shall be tested and made returnable in the same manner as other writs issuing out of the circuit court.

How writ executed.

SEC. 6. The sheriff or other officer to whom such writ shall be directed, shall execute the same on or before the return day thereof, by seizing so much of the lands, tenements, goods and chattels, moneys and effects of the defendant, wheresoever the same may be found in the county, as will be sufficient to satisfy the demand and costs, and by making an inventory thereof, and serving a copy of such attachment and inventory, certified by him, upon the defendant, if he can be found within the county.

Appraisement of property attached.

SEC. 7. All the property so attached, shall be appraised by two disinterested freeholders, who shall be first sworn by the officer to make a true appraisement thereof; which appraisement shall be signed by such freeholders and returned with the writ; but in case the property attached shall be situated in several counties, that portion thereof in

each of such counties may be separately appraised by two disinterested freeholders thereof, who shall be sworn, and whose appraisal shall be signed by them, and returned as aforesaid.

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CHAPTER 114.

SEC. 8. In attaching real estate, or any right or interest in land, it shall not be necessary that the officer should enter upon the land, or be within view of it.

Not necessary to enter upon land.

SEC. 9. Such attachment shall bind the goods and chattels so attached from the time they were attached.

Attachment to bind goods and chattels.

SEC. 10. Real estate shall be bound, and the attachment shall be a lien thereon from the time when it was attached, if a certified copy of the attachment, with a description of such real estate, shall be deposited in the office of the register of deeds in the county where the same is situated, within three days after such real estate was attached, otherwise such attachment shall be a lien thereon only from the time when such certified copy shall be so deposited.

When real estate bound by attachment.

SEC. 11. Each register of deeds shall note on every such certified copy, the day, hour and minute, when he receives it; and shall also enter in a book to be kept by him for that purpose, the names of the parties in such writ, designating who is plaintiff and who defendant, the time when the land was attached, and the time when such copy was deposited.

Duty of register of deeds on filing copy of attachment, &c.

SEC. 12. The register of deeds shall be entitled to a fee of twenty-five cents for his services in each case, to be paid on the delivery of such copy; and the appraisers of the property attached pursuant to the provisions of this chapter, shall each be entitled to receive one dollar for each day, and fifty cents for each half day necessarily occupied by him in the appraisal, and six cents per mile for traveling one way, to be paid on the rendition of the services; which fees and compensation may be taxed for the plaintiff in his bill of costs.

Fees of register and appraisers.

SEC. 13. The property attached shall remain in the hands of the officer serving the attachment, unless the defendant, or any other person in whose possession such property may have been found, shall, before judgment in such suit, deliver to the officer a bond, executed to him by two or more sufficient sureties, being freeholders within this state, either with or without such defendant or other person, to the satisfaction of such officer, as hereinafter provided.

Property to remain in hands of officer, unless bond be given.

SEC. 14. Such bond may be in a penalty double the amount specified in the affidavit annexed to the writ, as due to the plaintiff, conditioned for the payment of any judgment which may be recovered by the plaintiff in the suit commenced by such attachment, within sixty days after such judgment shall be rendered; or in a penalty double the appraised value of the property, and conditioned that such property shall be produced to satisfy any execution that may be issued on any judgment to be recovered by the plaintiff upon such attachment.

Contents of bond

SEC. 15. Upon the execution and delivery of such bond as provided in the preceding sections, the property attached shall be delivered by the officer to the defendant or person in whose possession the same shall have been found, but the suit shall not be discontinued or in any way affected by such delivery.

Release of property on delivery of bond.

SEC. 16. In case of a failure to perform the condition of any such bond, the plaintiff in such attachment may prosecute a suit thereon for his benefit, in the name of such officer, or his successor in office, or may take an assignment of such bond and sue thereon in his own name; and shall be entitled to recover thereon the full value of the

When and how bond may be sued.

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Proceedings on
return of writ
personally serv-
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Proceedings on
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Bond to be re-
turned and filed
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When plaintiff
may file declara-
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cation of notice.

When defendant
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fend.

Judgment and
execution in case
of personal ser-
vice, or appear-
ance of defend-
ant.

Judgment and
execution in case
attachment is not
personally serv-
ed, and defendant
does not appear.

property attached, or so much thereof as shall be sufficient to satisfy the judgment rendered on such attachment, with interest and costs.

SEC. 17. Upon the return of such writ, if it appear that a copy thereof has been personally served on the defendants, or either of them, or if either of the defendants shall appear in the suit, the same proceedings may be thereupon had in such suit, in all respects, as upon the return of an original writ of summons personally served, in a suit commenced by such summons.

SEC. 18. If it appear by the return of such writ that any property has been attached thereon, and that neither of the defendants could be found, the plaintiff shall, within thirty days after such return, unless the defendants or some of them shall sooner appear in the suit, cause a notice to be published in some newspaper printed in the county for which said circuit court is held, and if no newspaper is printed in said county, then in some newspaper printed in the judicial circuit in which such writ shall be returned, which notice shall state the names of the parties, the time when, from what court, and for what sum the writ was issued, and when the same was returnable, and shall be published for six successive weeks, and if any plaintiff shall neglect to cause such notice to be so published, as required in this section, the attachment shall be dismissed with costs.

SEC. 19. If any bond shall have been given to the sheriff or other officer serving the writ, as hereinbefore provided, he shall state the fact in his return to the attachment, and return and file such bond therewith; and if any such bond shall be given after the return of the writ, and before judgment, such sheriff or other officer shall immediately cause the same to be filed in the clerk's office to which such writ was returned, and give notice thereof to the plaintiff or his attorney.

SEC. 20. If a copy of the attachment shall not have been served upon any of the defendants, and none of them shall appear in the suit, the plaintiff, on filing an affidavit of the publication of the notice hereinbefore required for six successive weeks, may file his declaration in the suit, and proceed therein as if a copy of such attachment had been served upon the defendants.

SEC. 21. If any defendant not served with a copy of the attachment, shall appear at any time before judgment, he may be admitted by the court to defend the suit, upon such terms as such court may deem reasonable.

SEC. 22. When a copy of the attachment shall have been personally served on the defendant, or such defendant shall have appeared in the suit, judgment shall be rendered, and execution shall issue thereon, in the same manner, and with the like effect as in a suit commenced by summons, in which the summons shall have been returned personally served, except that by virtue of such execution, the officer to whom the same shall be directed and delivered, may sell any property attached in the suit, and remaining in the hands of the officer who served the attachment, wherever the same may be in this state.

SEC. 23. When a copy of the attachment shall not have been served, and the defendant shall not have appeared in the suit, judgment shall be rendered, and execution may issue in the same form as if such copy had been personally served, but such judgment shall not be conclusive against the defendant, and such execution shall only

authorize the officer to whom it is directed, to sell the property attached in such suit.

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SEC. 24. In the case specified in the last section, the attorney issuing the execution, shall indorse thereon or annex thereto, a description of the property so attached, with a direction to the officer to sell the same, or so much thereof as may be sufficient to satisfy the execution, and not to levy the same or any part thereof upon any other property.

Indorsement on execution in such case.

SEC. 25. If a bond shall have been given to the officer, conditioned for the payment of the judgment, as provided in the thirteenth and fourteenth sections of this chapter, and judgment be rendered in favor of the plaintiff, it shall not be necessary to issue any execution upon such judgment, to entitle such plaintiff to sue on such bond.

When not necessary to issue execution, to entitle plaintiff to sue bond.

SEC. 26. When any of the property taken in attachment shall consist of animals or perishable property, the court, or any judge thereof, may make an order, directing such property to be sold, and the money arising from such sale to be brought into court, to abide the order of such court.

Perishable property may be ordered to be sold.

SEC. 27. Upon such order for a sale being made, the officer having such property, shall advertise and sell the same, in the same manner that personal property is required to be advertised and sold on execution, and shall deposite the proceeds thereof with the clerk to whose office the attachment is required to be returned.

Officer to make sale, and deposite proceeds with clerk.

SEC. 28. If the plaintiff recover judgment, the court may order such money to be paid to the plaintiff thereon; but if judgment be rendered against the plaintiff, or the suit be discontinued, or the attachment dismissed, the court shall order such money to be paid to the defendant, or person entitled thereto.

To whom proceeds to be paid.

SEC. 29. The practice in actions commenced by attachment, shall be the same in all respects, as in personal actions commenced by summons, as near as may be, except as otherwise provided by law.

Practice in attachment suits.

SEC. 30. When two or more persons are jointly indebted as joint obligors, partners or otherwise, the attachment may be issued against the separate or joint estates or property of such joint debtors, or any of them, and the same proceedings shall be had as hereinbefore prescribed.

Attachments against property of joint debtors.

SEC. 31. If any estate which shall be attached shall be subject to a mortgage, or other incumbrance, and the mortgage shall be redeemed, or the incumbrance removed before the sale on the execution, such estate may be sold on such execution in the same manner and with the same effect as if the mortgage or other incumbrance had never existed.

Effect of sale in case of incumbrance removed before sale.

CHAPTER 115.

OF PROCEEDINGS BY AND AGAINST INFANTS.

SECTION 1. When an infant shall have any right of action, to recover any real property or the possession thereof, or to recover any debt or damages, he shall be entitled to maintain a suit thereon; and the

Right of infant to bring suit.
2 Paige, 374.

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Next friend to be appointed.
11 Wend., 164.
12 do 191.

By whom appointment to be made.

Upon what papers.
2 Paige, 374.

When bond may be required of next friend.

Where bond to be filed, &c.

Order to be filed.

Guardian for defendant.

How appointed.

Proceedings to compel appointment of guardian.
7 Wend., 489.

Ib.

same shall not be deferred or delayed, on account of such infant not being of full age.

SEC. 2. Before any process shall be issued in the name of an infant who is sole plaintiff in any suit, a competent and responsible person shall be appointed to appear as next friend for such infant in such suit, who shall be responsible for the costs thereof.

SEC. 3. Such appointment shall be made as follows :

1. If the suit is intended to be brought in the circuit court, by any judge thereof, or any master in chancery, or circuit court commissioner :

2. If intended to be brought in the county court, by the judge thereof, or a circuit court commissioner.

SEC. 4. It shall be made on the petition of the infant, and the written consent of the person proposed to be next friend to such infant, duly acknowledged before, or proved to the officer making the appointment.

SEC. 5. Before any person shall be appointed next friend for an infant in any suit to recover any debt or damages, he shall, if required by the officer to whom application for such appointment shall be made, execute a bond to such infant, in a penalty at least double the amount claimed in such suit, with such sureties as shall be approved by such officer, conditioned that such next friend shall duly account to such infant for all moneys which may be recovered in such suit.

SEC. 6. Such bond shall be delivered to such officer before the appointment shall be made, and shall be by him filed in the office of the judge of probate of the county in which such infant resides ; and such officer shall be entitled to receive from such next friend, the fee allowed by law to such judge of probate for filing such bond, to be paid by him.

SEC. 7. The order for the appointment of a next friend shall be filed in the office of a clerk or register of the court, before any declaration or bill shall be filed in such cause.

SEC. 8. After the issuing and service of process against any infant defendant, or the service of a declaration, if the suit be commenced by declaration, the suit shall not be any further prosecuted, until a guardian for such infant shall have been appointed.

SEC. 9. Such appointment shall be made upon the request of such defendant, and upon the written consent of any competent person proposed as guardian, by the court or any master in chancery, if the suit be commenced in chancery, or by any justice of the supreme court, or circuit court commissioner, if the suit be commenced in the circuit court ; and if commenced in the county court, by the judge thereof or a circuit court commissioner, and shall be filed in the office of a register or clerk of the court before any plea or answer be put in.

SEC. 10. If such infant defendant neglect, for twenty days after the return day of the process, or service of the declaration by which the suit was commenced, to procure the appointment of a guardian to defend the suit, the plaintiff may obtain an order from any judge or officer of the court mentioned in the preceding section, requiring such infant to procure the appointment of a guardian within ten days after the service of such order.

SEC. 11. If a guardian be not appointed within the time specified in such order, the judge or officer granting the same, shall appoint

some discreet person to be guardian for such infant, in the defence of such suit. TITLE XXIV.
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SEC. 12. No person appointed guardian for the purpose of defending a suit against an infant, shall be liable for the costs of such suit, unless specially charged by the order of the court for some personal misconduct in such cause. Liability for costs.

CHAPTER 116.

OF PROCEEDINGS BY AND AGAINST CORPORATIONS IN COURTS OF LAW.

SECTION 1. A foreign corporation created by the laws of any other state or country, may prosecute in the courts of this state, in the same manner as corporations created under the laws of this state, upon giving security for the payment of the costs of suit, in the same manner that non-residents are required by law to do. Foreign corporations may sue in this state on giving security for costs.

SEC. 2. But when, by the laws of this state, any act is forbidden to be done by any corporation, or by any association of individuals, without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of, or made or entered into in consideration of, such act. Exceptions.

SEC. 3. Suits against corporations may be commenced by original writ of summons, or by declaration, in the same manner that personal actions may be commenced against individuals, and such writ, or a copy of such declaration, in any suit against a corporation, may be served on the presiding officer, the cashier, the secretary, or the treasurer thereof; or if there be no such officer, or none can be found, such service may be made on such other officer or member of such corporation, or in such other manner, as the court in which the suit is brought may direct. Suits against corporations, how commenced.

SEC. 4. When such process, or a copy of such declaration with a notice of rule to plead, shall have been returned duly served, the appearance of the corporation shall be entered, and the plaintiff may proceed thereupon in such suit, in the same manner as in personal actions against natural persons. Proceedings on return of process duly served.

SEC. 5. When judgment shall be rendered against any incorporated bank, for the amount of any bills or other evidences of debt, payable absolutely, the payment of which shall have been refused by such bank, and no measure of damages shall be specified in the act incorporating such bank, the plaintiff shall recover interest on such amount from the time of such refusal, at the rate of ten per cent. a year, instead of the rate established by law. Measure of damages in certain cases.

SEC. 6. In suits brought by a corporation created by or under any statute of this state, it shall not be necessary to prove on the trial of the cause, the existence of such corporation, unless the defendant shall have pleaded in abatement, or given notice under his plea to the action, that the plaintiffs are not a corporation, and annex thereto an affidavit of the truth of such plea or notice. Proof of domestic corporation.

SEC. 7. In actions by or against any corporation created by or un- Reciting acts of incorporation.

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Mistake in naming corporation.

Attachment against foreign corporation.

Double costs, &c.

der any law of this state, it shall not be necessary to recite the act or acts of incorporation, or the proceedings by which such corporation was created, or to set forth the substance thereof, but the same may be pleaded by reciting the title of such act, and the date of its approval.

SEC. 8. In suits or proceedings by or against any corporation, a mistake in the naming of such corporation shall be pleaded in abatement; and if not so pleaded shall be deemed to have been waived.

SEC. 9. In suits commenced by attachment in favor of a resident of this state, against any corporation created by or under the laws of any other state, government or country, if a copy of such attachment, and of the inventory of property attached, shall have been personally served on any officer, member, clerk or agent of such corporation within this state, the same proceedings shall be thereupon had, and with the like effect, as in case of an attachment against a natural person, which shall have been returned served in like manner upon the defendant.

SEC. 10. If it shall appear to the court that any such suit against a foreign corporation, was brought vexatiously and without just cause, they shall award double costs against the plaintiff, and such plaintiff shall be liable to the defendants for all damages which they may sustain by such proceedings.

CHAPTER 117.

OF PROCEEDINGS AGAINST CORPORATIONS IN CHANCERY.

Injunctions against corporations in certain cases.
1837, p. 306, &c.
1839, p. 94, &c.

Issuing and continuance of injunction.

Jurisdiction of court over officers, &c.

SECTION 1. Upon a bill being filed under the direction of the attorney general, in any court having equity jurisdiction, the court shall have power to restrain by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the charter of such corporation; and in the same manner to restrain any individuals from exercising any corporate rights, privileges or franchises, not granted to them by any law of this state.

SEC. 2. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of, have usurped, exercised or claimed, any franchise, privilege, liberty or corporate right not granted to them, and after the coming in of the answer, such injunction may be continued until judgment at law shall have been had.

SEC. 3. The circuit court within the proper county shall have jurisdiction over directors, managers, trustees and other officers of corporations,

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge:

2. To decree and compel payment by them to the corporation whom they represent, and to its creditors, of all sums of money, and of the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted, by any

violation of their duties as such directors, managers, trustees or other officers :

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3. To suspend any such trustee or officer from exercising his office, whenever it shall appear that he has abused his trust :

4. To remove any such trustee or officer from his office, upon proof or conviction of gross misconduct :

5. To direct new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal :

6. In case there be no such body or board, or all the members of such board be removed, then to report the same to the governor, who shall be authorized, with the consent of the senate, to fill such vacancies :

7. To set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made : and,

8. To restrain and prevent any such alienation in cases where it may be threatened, or there may be good reason to apprehend that it is intended to be made.

SEC. 4. When any of the visitatorial powers enumerated in the preceding section, over any corporation, are or shall be vested, by statute, in any corporate body or public officer, the provisions of that section shall not be construed to divest or impair the powers so vested.

Construction of last section.

SEC. 5. The jurisdiction conferred by the third section of this chapter, shall be exercised as in ordinary cases, on bill or petition, as the case may require, or as the court may direct, at the instance of the attorney general prosecuting in behalf of the people of this state, or at the instance of any creditor of such corporation, or at the instance of any director, trustee or other officer of such corporation, having a general superintendence of its concerns.

Proceedings to execute powers.

SEC. 6. Whenever a judgment at law, or a decree in chancery, shall be obtained against any corporation, incorporated under the laws of this state, and an execution issued thereon shall have been returned unsatisfied in part or in whole, upon the petition of the person obtaining such judgment or decree, or his representatives, the circuit court within the proper county may sequester the stock, property, things in action and effects of such corporation, and may appoint a receiver of the same.

Sequestrating corporate property.

SEC. 7. Upon a final decree on any such petition, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in the next succeeding chapter, in the case of a voluntary dissolution of a corporation.

Distribution upon decree.

SEC. 8. Whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to pay and discharge its notes or other evidences of debt ; or for one year shall have suspended the ordinary and lawful business of such corporation ; it shall be deemed to have surrendered the rights, privileges and franchises granted by any act of incorporation or ac-

Surrender of corporate rights.

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CHAPTER 117.**

Proceedings
against certain
insolvent corpo-
rations.
1 Paige, 511.
2 do 451.

Who may apply
for injunction,
&c.

Court may ap-
point receivers.

Powers and obli-
gations of recei-
vers.
4 Paige, 224.

When stockhold-
ers, &c., may be
made parties.

Making directors,
&c., parties after
decree.

quired under the laws of this state, and shall be adjudged to be dissolved.

SEC. 9. Whenever any corporation having banking powers, or having the power to make loans, on pledges or deposits, or authorized by law to make insurances, shall become insolvent or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt on demand, or shall have violated any of the provisions of its act or acts of incorporation, or of any other act binding on such corporation, any court having equity jurisdiction, may, by injunction, restrain such corporation and its officers, from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

SEC. 10. Such injunction may be issued on the application of the attorney general in behalf the people of this state, or on the application of any creditor or stockholder of such corporation, upon bill or petition, filed for that purpose, and upon due proof of any of the facts in the last section required, to authorize the issuing of the same. Whenever such injunction shall issue against any bank, for any violation of its charter, on the application of any creditor, the court shall proceed to final decree in such case, and adjudge a forfeiture if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation, and in all such cases, the attorney general, under the direction of the governor, or any creditor, shall have the right to appear and prosecute such suit, and such suit shall not be discontinued if either of them so appear and prosecute such suit to final judgment.

SEC. 11. Upon such application being made, and in any stage of the proceedings thereupon, the court may appoint one or more receivers, to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall, in all respects, be subject to the control of the court.

SEC. 12. Such receivers shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed in the next succeeding chapter, upon receivers appointed in case of the voluntary dissolution of a corporation.

SEC. 13. If such application be made by a creditor of any corporation, whose directors or stockholders are made liable by law for the payment of such debt in any event or contingency, such directors or stockholders may be made parties to the bill or petition, either on the filing thereof, or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability.

SEC. 14. If any creditor of a corporation desire to make such directors or stockholders parties to the suit, after a decree therein against the corporation, he may do so, on filing a supplemental bill against them, founded upon such decree, and if such decree was rendered in a proceeding instituted by the attorney general, such creditor may, on his application, be made complainant therein, with or instead of the attorney general, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such suit.

SEC. 15. Whenever any creditor of a corporation shall seek to

charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his bill for that purpose in any court having chancery jurisdiction, which shall possess jurisdiction to enforce such liability.

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Bill against stockholders, &c.

SEC. 16. The court shall proceed thereon as in other cases, and when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred, and be subject to all the obligations imposed on receivers, by the next succeeding chapter, in case of the voluntary dissolution of a corporation.

Proceedings thereon.

SEC. 17. But if, on the coming in of the answer, or upon the taking of any such account, it shall appear that such corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors, and stockholders, and enforce the same, by its decree, as in other cases.

Proceedings if corporation be insolvent.

SEC. 18. Upon a final decree being made upon any such application to restrain a corporation, or upon any such bill filed against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its fair and honest creditors, in the order and in the proportions prescribed by the next chapter, in the case of a voluntary dissolution of a corporation.

Distribution of property.

SEC. 19. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, shall have been made parties to a suit in which a decree shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the company.

When stockholders compelled to pay on stock held by them.

SEC. 20. If the debts of the company shall remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to decree the amount payable by each, and enforce such decree as in other cases.

Enforcing payment by directors, &c.

SEC. 21. Upon any application to the court having jurisdiction, in any of the cases provided in this chapter, such court may compel such corporation to discover any stock, property, things in action or effects alleged to belong, or to have belonged to it, the transfer and disposition thereof, and the consideration, and all the circumstances of such disposition.

Discovery by corporation.
3 Paige, 231

SEC. 22. Every officer, agent or stockholder of any corporation, against which proceedings shall be instituted, according to the provisions of this chapter, and every person to whom it shall be alleged that any transfer of any property or effects of such corporation has been made, or in whose possession or control any such property or effects shall be alleged to be, may be compelled, in the discretion of the court, to answer a bill filed to obtain any discovery in the preceding section specified, notwithstanding such answer may expose the corporation of which he is a member, to a forfeiture of its corporate rights, or any of them.

Discovery by officers, &c.

SEC. 23. The answers of the officers and agents of any corporation, shall be evidence against the corporation, in the same manner, and to the same extent as if such answers had been given upon an examina-

Answers, how far evidence, and how compelled.

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Answer, &c., not
to be used on in-
dictment.

Staying proceed-
ings at law.

Certain corpora-
tions excepted.
3 Paige, 303.

tion of such officers or agents, as witnesses in the cause, and such officers or agents may subsequently be examined as witnesses by either party, under the order of the court, but no such answer shall be compelled, unless by special order of the court.

SEC. 24. Neither the answer of any such officer or agent, nor his testimony upon any such subsequent examination, shall be used as evidence upon any indictment, or other criminal prosecution or proceeding against him.

SEC. 25. Whenever any bill shall be filed, or any application made against any corporation, its directors or other superintending officers, or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party, and at any stage of the proceedings, restrain all proceedings at law, by any creditor against the defendants in such suit; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the suit, within a reasonable time, not less than six months from the first publication of such order, and in default thereof, to be precluded from all benefit of the decree, which shall be made in such suit, and from any distribution which shall be made under such decree.

SEC. 26. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation, or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this state.

CHAPTER 118.

OF THE VOLUNTARY DISSOLUTION OF CORPORATIONS, AND OF THE ABATEMENT OF SUITS BY AND AGAINST THEM.

Who may apply
for dissolution.
1839, p. 94, &c.

SECTION 1. Whenever the directors, trustees or other officers having the management of the concerns of any corporation, or the majority of them, shall discover that the stock, property and effects of such corporation have been so far reduced by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with such corporation, or whenever such directors, trustees or officers, or a majority of them, shall for any reason, deem it beneficial to the stockholders that such corporation should be dissolved, they may apply to any court having equity jurisdiction, by petition for a decree dissolving such corporation, pursuant to the provisions of this chapter.

Contents of ap-
plication, &c.

SEC. 2. Every such application shall contain a statement of the reasons which induce the applicants to desire a dissolution of the corporation; and there shall be annexed thereto,

1. A full, just and true inventory of all the estate, both real and personal, in law and equity, of such corporation, and of all the books, vouchers and securities relating thereto:

2. A full, just and true account of the capital stock of such corporation, specifying the names of the stockholders, their residence when known, the number of shares belonging to each, the

amount paid in upon such shares respectively, and the amount still due thereon :

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3. A statement of all incumbrances on the property of such corporation :

4. A full and true account of all the creditors of such corporation, and of all engagements entered into by such incorporation, which may not have been fully satisfied and canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated ; the sum owing to each creditor ; the nature of each debt or demand ; and the true cause and consideration of such indebtedness in each case.

SEC. 3. To every such petition there shall also be annexed an affidavit of the applicants, that the facts stated in such application, and the accounts, inventories and statements contained therein or annexed thereto, are just and true, so far as the applicants respectively know or have the means of knowing.

Affidavit.

SEC. 4. Upon such petition, accounts, inventories and affidavits being filed, an order shall be entered requiring all persons interested in such corporation, to show cause, if any they have, why such corporation should not be dissolved, before some master in chancery, to be named in such order, at some time and place to be therein specified, not less than three months from the date thereof.

Order to show cause.

SEC. 5. Notice of the contents of such order shall be published, once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper published in the county where the principal place of conducting the business of such corporation shall be situated, if any newspaper be published in such county.

Notice, how published.

SEC. 6. On the day appointed in such order, such master shall proceed to hear the allegations and proofs of the parties, and shall take testimony in relation thereto, and shall, with all convenient speed, report the same to the court, with a statement of the property, effects, debts, credits and engagements of such corporation, and of all other matters and things pertaining to such corporation.

Proceedings of master.

SEC. 7. Such master shall be entitled to the use of the original petition and schedules annexed thereto, if he require the same, by an order on the register of the court with whom they may be deposited, and shall return the same with his report.

Master to have petition, &c.

SEC. 8. Upon the coming in of the report of the master, if it shall appear to the court that such corporation is insolvent, or that for any reason, a dissolution thereof will be beneficial to the stockholders, and not injurious to the public interest, a decree shall be entered, dissolving such corporation, and appointing one or more receivers of its estate and effects ; and such corporation shall thereupon be dissolved, and shall cease.

When corporation to be dissolved.
1 Paige. 258.

SEC. 9. Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who upon entering upon the duties of their appointment, shall give such security to the people of this state, and in such penalty as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys and effects received by them as such receivers.

Directors, &c., may be appointed receivers, to give security.

SEC. 10. Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the

Rights of receivers.



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security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation, and of its stockholders.

Their authority.

SEC. 11. Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of an insolvent debtor may be made, pursuant to the provisions of the one hundred and forty-fifth chapter of these revised statutes.

When receivers to prosecute for arrears of stock

SEC. 12. If there shall be any sum remaining due upon any share of stock subscribed in such corporation the receiver shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file his bill in any court having equity jurisdiction, or may commence and prosecute an action at law for the recovery of such sum, without the consent of any creditors of such corporation.

Receivers to give notice of their appointment, &c.

SEC. 13. The receivers, immediately on their appointment, shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addition thereto, shall require all persons holding any open or subsisting contract of such corporation, to present the same in writing, and in detail, to such receivers, at the time and place in such notice specified; which shall be published once in each week for six successive weeks in such paper as the court may direct, and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated, if such newspaper be there published.

Certain sales, &c. void.

SEC. 14. All sales, assignments, transfers, mortgages and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation.

Debtors to account to receivers. Power of receivers.
4 Paige, 225.

SEC. 15. After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation shall account and answer for the amount of such debt, and for the value of such property to the said receivers; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation.

Referring controversies.

SEC. 16. Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors, and the same proceedings shall be had for that purpose, and with the like effect; and application may be made to any officer authorized to appoint such referees on the application of the trustees of insolvent debtors, who shall proceed therein in the same manner; and the referees shall proceed in like manner and file their report with the like effect in all respects.

Duties and obligations of receivers, meetings of creditors to be called.

SEC. 17. The receivers shall be subject to all the duties and obligations imposed by law on trustees of insolvent debtors, so far as they

may be applicable, except where other provisions are herein made, and they shall call a general meeting of the creditors of such corporation within four months from the time of their appointment, when all accounts and demands in favor of and against such corporation, and all its open and subsisting contracts shall be ascertained and adjusted, as far as may be, and the amount of moneys in the hands of the receivers declared.

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SEC. 18. If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

Open and subsisting contracts.

SEC. 19. Such receivers shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors and administrators.

Commissions of receivers.

SEC. 20. The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums which they are hereinbefore authorized to pay for the purpose of canceling and discharging any open or subsisting engagements.

To retain certain moneys.

SEC. 21. If any suit be pending against the corporation, or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand, if established, and the necessary costs in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

To meet demands in suit.

SEC. 22. The receivers shall distribute the residue of the moneys in their hands, among all those who have exhibited their claims as creditors, and whose debts have been ascertained, as follows:

Order of payment of debts.

1. All debts entitled to a preference under the laws of the United States:

2. Executions actually levied against such corporations to the extent of the property on which they shall respectively be levied, and according to their legal priority:

3. Creditors having made special deposits, if such deposits remain in kind:

4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialities.

SEC. 23. If the whole of the estate of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, notice shall be published once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper printed in the county where the principal place of business of such corporation was situated, if there be such newspaper.

Second dividend.

SEC. 24. Such second dividend shall be made in all respects in the

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thereon.

same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, unless ordered by the court, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

Debts not exhibi-
ted.

SEC. 25. After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demand of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

Distribution of
surplus to stock-
holders.

SEC. 26. After a final dividend is made, and the debts of any such corporation are paid, if there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid by them, severally, on their shares of stock.

Disposition of
moneys retained.

SEC. 27. When any suit pending at the time of the final dividend, shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary costs and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

Receivers sub-
ject to control of
court, &c.

SEC. 28. The receivers shall be subject to the control of the court, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, or by death or otherwise, may be supplied by the court.

Account by re-
ceivers.

SEC. 29. Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of their proceedings to the court, which shall be referred to a master to examine and report thereon.

Previous notice
thereof.

SEC. 30. Previous to rendering such account, the receivers shall insert a notice of their intention to present the same, once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper of the county in which notices of dividends are herein required to be published, if there be one, specifying the time and place at which such account will be rendered.

Duty of master
on reference to
him.

SEC. 31. The master to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

Settlement of ac-
count; its effect.

SEC. 32. Upon the coming in of such report, the court shall hear the allegations of all concerned therein and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it upon any open or subsisting engagements, and upon all the stockholders of such corporation.

SEC. 33. Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account as hereinbefore provided, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

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Further accounts to be rendered.

SEC. 34. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation, or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this state.

Corporations excepted.

SEC. 35. The dissolution of a corporation by a decree of the court, or by the expiration of its charter, or otherwise, shall not abate any suit or proceedings in favor of such corporation which shall have been pending at the time of such dissolution; but all such suits or proceedings may be continued by the receivers who shall have been appointed for such corporation by the court, or by the trustees on whom the estate and effects of such corporation shall have devolved, in the name of such corporation, or in the names of such receivers or trustees, who may be substituted as plaintiffs under the direction of the court in which the suit shall be pending, and subject to such order as the court may deem expedient, in relation to the payment or security of costs.

Dissolution of corporation not to abate suit, &c.

SEC. 36. Whenever a receiver of the property and effects of a corporation has been appointed before its dissolution, or afterwards, new suits may be brought and carried on by any such receivers, either in their own names, or in the name of the corporation for which they shall have been appointed.

New suits by receivers.

SEC. 37. No suit commenced in the name of any such receiver, shall be abated by his removal or death; but the same may be continued in the name of the remaining receiver, if there be one, or in the name of the successor of the receiver so removed or deceased, or of the corporation, as may be directed by the court in which the suit may be pending.

Suit commenced by receivers, not to abate by death, &c.

SEC. 38. The court in which any suit or proceeding against a corporation which shall have been dissolved by a decree in chancery or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party thereto, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or decree shall be had therein.

Suits against corporations dissolved, how continued.

CHAPTER 119.

OF PROCEEDINGS BY AND AGAINST PUBLIC BODIES, HAVING CERTAIN CORPORATE POWERS, AND BY AND AGAINST OFFICERS REPRESENTING THEM.

SECTION 1. In all cases not otherwise provided by law, actions may be brought by the board of supervisors of a county; by county superintendents of the poor; by supervisors of townships; by directors of the poor of the several townships; by inspectors of pri-

Actions by certain public officers.

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mary schools, and commissioners of highways of the several townships, and by assessors of school districts, upon any contract lawfully made with them or their predecessors in their official character, or to enforce any liability, or any duty enjoined by law, to such officers or the body which they represent, and to recover damages for any injuries done to the property or rights of such officers, or of the bodies represented by them.

In what names
actions to be
brought.

SEC. 2. Such actions, when brought by any board of supervisors, shall be in the name of such board as provided by law; when brought by any supervisor in behalf of his township, they shall be brought in the name of such township; when brought by superintendents of the poor, inspectors of primary schools, commissioners of highways, or directors of the poor, or by any other officers authorized to sue in their name of office, they shall be brought in the name of their respective offices, without naming the persons holding the same, and when brought by the assessor or other person representing a school district, they shall be brought in the name of such district.

On contracts
with predeces-
sors.

SEC. 3. Such actions may be brought by such officers, notwithstanding the contract or obligation on which the same is founded, may have been made with or to any predecessors of such officers, and notwithstanding any right of action may have accrued previous to the time when the officers commencing such suit entered upon the execution of the duties of their office.

Actions against
certain officers
and bodies.

SEC. 4. Actions against any of the officers or bodies named in the second section of this chapter, shall be brought against them by the same name in which such officers or bodies are respectively authorized to sue, and such actions may be commenced and prosecuted to final judgment, in the same manner, as near as may be, as actions against individuals, except as otherwise is or shall be provided by law.

On contracts of
predecessors.

SEC. 5. When any contract shall have been entered into, or any liability incurred, by or in behalf of any county or township, by any officer thereof, within the scope of his authority, the same remedies may be had after the termination of his office, and process may be served in the same manner upon any successor of such officer, as if he had continued in office.

Not abated by
death, &c., of
officers.

SEC. 6. No suit commenced by or against any officers named in this chapter, or the bodies represented by them, shall be abated or discontinued by the death of such officers, their removal from, or resignation of their offices, or the expiration of their term of office; but such suit shall be prosecuted or defended by their successors in such office, in the same manner as if no such change had taken place.

Judgment against
townships, &c.,
how collected.

SEC. 7. When a judgment shall be recovered against any township, or against any township officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed, shall be levied and collected as other township charges; and when so collected, shall be paid by the township treasurer to the person to whom the same shall have been adjudged upon the delivery of a proper voucher therefor.

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CHAPTER 120.OF SUITS AGAINST SHERIFFS AND OTHER OFFICERS ON THEIR
OFFICIAL BONDS.

SECTION 1. Whenever a sheriff shall have become liable for the escape of any prisoner committed to his custody, or whenever he shall have been guilty of any default or misconduct in his office, the party injured thereby may prosecute an action therefor, upon the official bond of such sheriff, in the name of the people of the state of Michigan, stating in the process, pleadings, proceedings and record in such action, that the same is brought for the use or benefit of such party; and such party shall be deemed the plaintiff in such action.

Action on official
bond of sheriff.

SEC. 2. In such action the same pleadings and proceedings shall be had, as are provided by law in the case of suits upon bonds with other conditions than for the payment of money, except as herein otherwise provided, and judgments shall be rendered for the defendants in the like cases.

Pleadings, &c.,
therein.

SEC. 3. But such judgment shall not be a bar to any other suit that may be brought on the same official bond by the same plaintiff, for any other delinquency or default of such sheriff, than such was assigned as a breach of the condition of such bond, in the action in which such judgment was rendered.

Other delinquen-
cies not affected.

SEC. 4. During the pendency of any suit upon such official bond, or after judgment rendered in such suit, any other party aggrieved by the default or delinquency of such sheriff, may, in like manner, prosecute an action upon such official bond; and the pendency of any other suit on the same bond, or a judgment recovered by or against any other person on such bond, shall not abate, or in any manner affect such suit, or the proceedings therein, except as hereinafter provided.

Other parties
may sue.

SEC. 5. Any person who may have recovered any judgment upon such official bond, may, in like manner, prosecute upon such bond, whenever he is aggrieved by any other default or delinquency than such as shall have been the subject of the former action, and shall proceed therein in like manner as hereinbefore provided.

When same
plaintiff may sue.

SEC. 6. No scire facias shall be brought upon any judgment rendered upon such official bond, by the party for whose use such judgment was obtained, or by any other person, for any breach of the condition of such bond.

Scire facias not
to be brought.

SEC. 7. Every suit brought upon such official bond, and every judgment rendered therein, shall be deemed the private suit and judgment of the party for whose use the same shall be brought or obtained; and such suit may be discontinued, and such person may be non-suited as in private suits; and the judgment therein may be canceled and discharged by such person, in the same manner as if he were the nominal plaintiff, and shall be deemed satisfied in the same cases as judgments by individuals.

Such actions to
be deemed pri-
vate suits.

SEC. 8. If the suit be discontinued, or the person for whose use the same was brought be non-suited, or judgment be rendered for the defendants, upon verdict, demurrer or otherwise, costs shall be awarded against such person as if he were the nominal plaintiff, and judgment shall be rendered for such costs, and execution awarded against him thereon in the same manner.

Judgment against
plaintiff in inter-
est..

SEC. 9. No such suit shall be barred, nor shall the amount which

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When notice of judgment recovered not available.

the plaintiff may be entitled to recover therein, be affected by any notice given by any surety in such bond, of a judgment recovered thereon, unless it be accompanied by an allegation that the sureties in such bond, some or one of them, have been obliged to pay the damages assessed by such judgment, or some part thereof, for the want of sufficient property of such sheriff whereon to levy the same, or that they will be obliged to pay the same, or some part thereof, for the same reason; nor unless such notice be verified by the oath of the defendant giving the same.

When surety to be acquitted.

SEC. 10. If it shall appear that the amount of any damages so recovered, which such surety has been obliged to pay, or will be obliged to pay, as specified in the last section, is equal to the amount for which such defendant shall be liable, by virtue of the bond, he shall be acquitted and discharged of all further liability, and judgment shall be rendered in his favor.

Allowance to surety in estimating liability.

SEC. 11. If it shall appear that the amount of any damages so recovered, which such surety has been obliged to pay, or which he will be obliged to pay, is not equal to the liability of such surety, the amount thereof shall be allowed to such defendant, in estimating the extent of his liability in any such action.

Direction on execution.

SEC. 12. Whenever a judgment shall be obtained against a sheriff and his sureties, a direction shall be endorsed on the execution issued thereon, by the attorney issuing the same, to levy the amount of such execution, in the first place, of the property of such sheriff, and if sufficient property of such sheriff cannot be found to satisfy such execution, then to levy the deficiency of the property of the sureties.

Several judgments; distribution.

SEC. 13. Whenever several judgments shall be obtained at the same term, upon any official bond of a sheriff, for damages, amounting in the whole to more than the sums for which the sureties therein shall be liable, the court shall order the moneys levied upon such judgments, from the property of the sureties, to be distributed to the persons for whose use such judgments were recovered respectively, in proportion to the amount of their respective recoveries.

Distribution of moneys collected.

SEC. 14. If executions be issued upon several judgments obtained at the same term, upon any such official bond, and sufficient moneys shall not be raised to satisfy all of the said executions, the court shall distribute the moneys collected on such executions, to the persons, respectively, for whose use such judgments were recovered, in proportion to the amount of their respective recoveries.

Suits on official bonds of other officers.

SEC. 15. Suits upon the official bonds of registers of the courts of equity, clerks of the supreme court, clerks of counties, registers of deeds of counties, masters in chancery, notaries public, and of all other officers required to give bond to the people of this state, in relation to which no other provision of law is or shall be made, may be prosecuted by any person aggrieved by any delinquency or misconduct of such officers respectively, and such suits shall be prosecuted, and judgments rendered therein, in the same manner herein prescribed in relation to suits on the official bonds of sheriffs, and with the like effect.

Same proceedings as on official bonds of sheriffs.

SEC. 16. All the provisions of this chapter, relating to suits upon the official bonds of sheriffs, and to the proceedings, pleadings, judgments, executions, and distribution of moneys collected therein, shall apply to suits upon the official bonds mentioned in the preceding section, so far as the same may be applicable thereto.

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OF PROCEEDINGS AS FOR CONTEMPTS, TO ENFORCE CIVIL REMEDIES, AND
TO PROTECT THE RIGHTS OF PARTIES IN CIVIL ACTIONS.

SECTION 1. Every court of record shall have power to punish by fine and imprisonment, or either, any neglect or violation of duty, or any misconduct, by which the rights or remedies of a party in a cause or matter depending in such court, or triable therein, may be defeated, impaired, impeded or prejudiced in the following cases : Cases in which courts of record may punish for misconduct.

1. All attorneys, counsellors, solicitors, clerks, registers, sheriffs, coroners and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in such office or trust, or for any wilful neglect or violation of duty therein ; for disobedience of any process of such court, or of any lawful order thereof, or of any lawful order of a judge of such court, or of any officer authorized to perform the duties of such judge :

2. Parties to suits for putting in fictitious bail or sureties, or for any deceit, or abuse of the process or proceedings of the court :

3. Parties to suits, attorneys, counsellors, solicitors, and all other persons, for the non-payment of any sum of money ordered by such court to be paid, in cases where by law execution cannot be awarded for the collection of such sum ; and for any other disobedience to any lawful order, decree or process of such court : 3 Paige, 578.

4. All persons for assuming to be officers, attorneys, solicitors or counsellors of any court, and acting as such without authority ; for rescuing any property or persons, which shall be in the custody of any officer by virtue of process issued from such court ; for unlawfully detaining any witness or party to a suit, while going to, remaining at, or returning from the court where such suit shall be noticed for trial ; and for any other unlawful interference with the process or proceedings in any action :

5. All persons summoned as witnesses, for refusing or neglecting to obey such summons, or to attend, or to be sworn, or answer as such witness :

6. Persons summoned as jurors in any court, for improperly conversing with any party to a suit to be tried at such court, or with any other person in relation to the merits of such suit ; for receiving communications from any such party, or from any other person in relation to the merits of such suit, without immediately disclosing the same to the court :

7. All inferior magistrates, officers and tribunals, for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law, after such cause or matter shall have been removed from their jurisdiction : and,

8. All other cases where attachments and proceedings as for contempt have been usually adopted and practiced in courts of record, to enforce the civil remedies of any party, or to protect the rights of any such party. 2 Paige, 495, 578

SEC. 2. When any misconduct, punishable by fine and imprisonment as declared in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily, by fine or imprisonment, or both, as hereinafter prescribed. When may be punished summarily.

SEC. 3. When such misconduct is not so committed, the court When notice, &c. to be given.

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shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defence, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena.

When attachment peremptory.

SEC. 4. When any rule or order of the court shall have been made for the payment of costs, or any other sum of money, and proof by affidavit, shall be made of the personal demand of such sum of money, and of a refusal to pay it, the court may issue a precept to commit the person so disobeying, to prison, until such sum, and the costs and expenses of the proceeding shall be paid.

When order or attachment to answer.

SEC. 5. In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct.

Attachment to answer, without special order.

SEC. 6. When a rule shall have been entered in any court, according to the practice thereof, requiring any officer or other person, to whom any process of such court may have been directed and delivered, to return the same, an attachment for disobedience of such rule may issue according to the practice of the court, to arrest such officer or person, to answer for such disobedience, without special application to the court.

When court may award habeas corpus.

SEC. 7. If the party charged with misconduct, be in the custody of any officer, by virtue of an execution against his body, or by virtue of any process for any other contempt or misconduct, the court may award a writ of habeas corpus, to bring up the body of such person, to answer for such misconduct.

When habeas corpus may be allowed by judge, &c.

SEC. 8. In cases where a party is entitled to an attachment against any person, without the special order of the court, and such person shall be in custody, as specified in the last section, a writ of habeas corpus, to bring up such person, may be allowed by any judge of the court, or by any officer authorized to perform the duties of such judge in vacation.

Powers of sheriff.

SEC. 9. Such writ shall authorize the sheriff in whose custody such person shall be, to remove and bring him before the court to which the same shall be returnable, and to detain him at the place where such court shall be sitting, until some order be made by the court for his disposition.

When penalty of bond to be directed.

SEC. 10. When an attachment shall be issued according to the provisions of this chapter, by the special order of any court, such court shall direct the penalty in which the defendant shall give bond for his appearance to answer.

When penalty to be directed by single judge, &c.

SEC. 11. In all other cases, when a party shall be entitled to an attachment, without the special order of the court, he shall make application to a judge of the court, or to some officer authorized to perform the duties of such judge, who upon due proof of the facts and circumstances, shall direct the penalty in which the defendant shall give bond for his appearance to answer the matters alleged against him, and shall endorse such order on the attachment.

Keeping persons arrested.

SEC. 12. Upon arresting any defendant upon an attachment, to answer for any alleged misconduct, the sheriff shall keep such person in his actual custody, and shall bring him personally before the court

issuing the attachment, and shall keep and detain him in his custody, until such court shall have made some order in the premises, unless such defendant shall entitle himself to be discharged, as prescribed in the next section.

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SEC. 13. In cases where a sum shall have been endorsed on any attachment issued by the special order of the court, and where any sum shall have been so endorsed by any judge or other officer, as hereinbefore prescribed, the defendant shall be discharged from arrest on such attachment, upon executing and delivering to the officer making the same, in his name of office, and to his assigns, at any time before the return day of such writ, a bond with two sufficient sureties, in the penalty endorsed on such attachment, with a condition that the defendant will appear on the return of such attachment, and abide the order and judgment of the court thereupon.

To be discharged
on giving bond.

SEC. 14. When an attachment shall be issued by the special order of the court, a certificate to that effect shall be endorsed thereon by the clerk of such court, and if no sum be specified in which the defendant shall be held to bail on such writ, he shall not be entitled to be discharged from the arrest thereon, upon executing any bond, or in any other manner, unless upon the special order of the court issuing the attachment.

When to be dis-
charged on order
of court only.

SEC. 15. When an attachment shall be issued without the special order of the court, and an order specifying the sum in which the defendant is to be held to bail, is not endorsed thereon, the defendant shall be discharged from the arrest thereon, on executing a bond in the penalty of one hundred dollars, with sureties, in the same manner, and with the like condition, as hereinbefore specified.

When penalty to
be one hundred
dollars.

SEC. 16. Upon returning any attachment, the officer executing the same, shall return the bond, if any, taken by him of the defendant, which shall be filed with such attachment.

Bonds to be re-
turned.

SEC. 17. The sheriff or other officer to whom any attachment shall be delivered, shall return the same by the return day specified therein, without any previous rule or order for that purpose, and in case of default, an attachment may be issued against him of course, upon being allowed by a judge of the court, or by an officer authorized to perform the duties of such judge, upon proof of such default; and in such allowance, the cause of issuing the same shall be stated, and that the defendant is not to be discharged upon bail, or in any other manner but by order of the court.

Neglect to return
attachment.

SEC. 18. The officer to whom such last mentioned attachment shall be delivered, shall execute the same by arresting and keeping the defendant in his custody, bringing him personally before the court, and detaining him in such custody, until the order of the court.

Defendant, how
kept.

SEC. 19. When any defendant, arrested upon an attachment, shall have been brought into court, or shall have appeared therein, the court shall cause interrogatories to be filed, specifying the facts and circumstances alleged against the defendant, and requiring his answer thereto; to which the defendant shall make written answers on oath, within such reasonable time as the court shall allow; and the court may receive any affidavits or other proofs, contradictory of the answers of the defendant, or in confirmation thereof; and upon the original affidavits, such answers and such subsequent proof, shall determine whether the defendant has been guilty of the misconduct alleged.

Interrogatories,
evidence, &c.

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When accused
to be punished.

SEC. 20. If the court shall adjudge the defendant to have been guilty of the misconduct alleged, and that the misconduct was calculated to, or actually did, defeat, impair, impede or prejudice the rights or remedies of any party, in a cause or matter depending in such court, it shall proceed to impose a fine, or to imprison him, or both, as the nature of the case shall require.

When sum to be
paid to indemnify
party injured.
4 Paige, 282.

SEC. 21. If an actual loss or injury has been produced to any party, by the misconduct alleged, the court shall order a sufficient sum to be paid by the defendant to such party, to indemnify him, and to satisfy his costs and expenses, instead of imposing a fine upon such defendant; and in such case, the payment and acceptance of such sum shall be an absolute bar to any action by such aggrieved party, to recover damages for such injury or loss.

Fine in other cases.

SEC. 22. In all cases other than that specified in the last preceding section, the fine shall not exceed two hundred and fifty dollars, over and above the costs and expenses of the proceedings.

Time of imprisonment.
2 Paige, 40.

SEC. 23. When the misconduct complained of consists in the omission to perform some act or duty, which is yet in the power of the defendant to perform, he shall be imprisoned only until he shall have performed such act or duty, and paid such fine as shall be imposed, and the costs and expenses of the proceedings.

Order what to
specify.

SEC. 24. In such case the order and process of commitment, shall specify the act or duty to be performed, and the amount of the fine and expenses to be paid.

When to be imprisoned six
months, &c.

SEC. 25. In all other cases where no special provision is otherwise made by law, if imprisonment be ordered, it shall be for some reasonable time, not exceeding six months, and until the expenses of the proceedings are paid; and also if a fine be imposed, until such fine be paid; and in the order and process of commitment, the duration of such imprisonment shall be expressed.

Liable to indictment.

SEC. 26. Persons proceeded against according to the provisions of this chapter, shall also be liable to indictment for the same misconduct, if it be an indictable offence; but the court before which a conviction shall be had on such indictment, shall take into consideration the punishment before inflicted, in forming its sentence.

Default of defendant.

SEC. 27. If the defendant against whom an attachment shall have been issued and returned served, do not appear on the return day thereof, the court may either award another attachment, or may order the bond taken on the arrest to be prosecuted, or both.

Suit on bond.

SEC. 28. Such order shall operate as an assignment of the bond to any aggrieved party who shall be authorized by the court to prosecute the same, and such party may maintain an action thereon in his own name, as assignee of the sheriff or officer to whom the same was given, in the same manner as in other actions on bonds with condition to perform covenants other than the payment of money.

Damages therein.

SEC. 29. The measure of the damages to be assessed in such action, shall be the extent of the loss or injury sustained by such aggrieved party, by reason of the misconduct for which the attachment was issued, and his costs and expenses in prosecuting such attachment.

When bond to be
sued by attorney
general, or prosecuting
attorney.

SEC. 30. If there be no party aggrieved by the misconduct for which the attachment was issued, the court, in case the defendant shall fail to appear according to the condition of the bond taken on the arrest, shall order the same to be prosecuted by the attorney general, or by the prosecuting attorney for the county in which the bond was taken, in the name of the officer who took such bond.

Sec. 31. In such case the whole penalty of the bond shall be forfeited and recovered, and from the moneys collected thereon, the court shall order such sum to be paid to the party prosecuting the attachment, as the court ordering the prosecution shall think proper, to satisfy the costs and expenses incurred by him, and to compensate him for any injury he may have sustained by the misconduct for which such attachment was issued ; and the residue of such moneys shall be paid into the treasury of the county, in which the bond was taken, to the credit of the library fund.

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Recovery ; application thereof.

Sec. 32. If on the return of an execution, duly issued upon any judgment obtained on such bond, it shall appear that the sureties taken therein were at the time of taking them, insufficient, and that the officer receiving them had reasonable ground to doubt their sufficiency, he shall be liable in an action on the case to the party aggrieved, who may have prosecuted such suit, for the amount of the judgment recovered by him, and for his costs and expenses in such suit ; or if such suit was brought by the attorney general or a prosecuting attorney, an action on the case may in like manner be brought by them, in the name of the people of this state, for the amount of the judgment so recovered ; and the same disposition of the moneys collected in such action on the case against such officer, shall be made, as directed in the last preceding section.

Taking insufficient sureties.

Sec. 33. Whenever by the provisions of this chapter, an officer is required to keep any person arrested upon an attachment in actual custody, and to bring him personally before any court, the inability, from sickness or otherwise, of such person to attend such court personally, shall be a sufficient excuse for not bringing him before such court ; nor shall any officer be required, in any case, to confine any person arrested upon an attachment to answer for misconduct, in any prison, or otherwise to restrain him of his personal liberty, except so far as shall be necessary to secure his personal attendance.

Sickness of defendants, &c.

Persons arrested, how kept.

CHAPTER 122.

OF PROCEEDINGS FOR THE COLLECTION OF DEMANDS AGAINST SHIPS, BOATS AND VESSELS.

SECTION 1. Every ship, boat or vessel used in navigating the waters of this state, shall be subject to a lien thereon,

What claims to be a lien.
1839, p. 70, &c.
1844, p. 27.
17 J. R., 54.
1 Wend., 557.
5 do 510.

1. For all debts contracted by the master, owner, agent or consignee thereof, on account of supplies furnished for the use of such ship, boat or vessel ; on account of work done, or materials furnished by mechanics, tradesmen or others, in or about the building, repairing, fitting, furnishing or equipping such ship, boat or vessel :

2. For all sums due for wharfage or anchorage of such ship, boat or vessel within this state :

3. For all damages arising from the non-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of such ship, boat or vessel :

4. For all damages arising from injuries done to persons or prop-

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Application for
warrant to whom
made.

erty by such ship, boat or vessel, where the same shall have occurred through the negligence or misconduct of the master or hands employed thereon.

SEC. 2. Any person having any such claim or demand as is specified in the preceding section, may make application to any officer authorized to perform the duties of a justice of the supreme court at chambers, or to any judge of any court of record in the county within which such ship, boat or vessel shall then be, for a warrant to enforce the lien of such claim or demand, and to collect the amount thereof.

What application
to specify.

SEC. 3. Such application shall be in writing, and shall specify the particulars of such demand, and in whose favor the same accrued, and the amount due the creditor or claimant, over and above all payments and discounts, as near as may be; and shall be verified by the affidavit of such creditor or claimant, or of some other credible person having knowledge of the facts.

Warrant to be is-
sued; contents
thereof.

SEC. 4. The officer to whom such application shall be made, shall thereupon issue his warrant to the sheriff of the county, commanding him to attach, seize and safely keep such ship, boat or vessel, her tackle, apparel and furniture, to answer all such liens as shall be established against it according to law; and to make return of his proceedings under such warrant to the said officer, within ten days after such seizure.

To be executed.

SEC. 5. The sheriff to whom any such warrant shall be directed and delivered, shall forthwith execute the same, and shall keep the boat or vessel and other property seized by him, to be disposed of as hereinafter directed.

Return.

SEC. 6. Such sheriff shall also, within ten days after such seizure, make a return to the officer who issued the warrant, stating therein particularly his doings in the premises; and shall make out, subscribe and annex thereto, a just and true inventory of all the property so seized.

When no other
warrant to be is-
sued.

SEC. 7. Whenever any such warrant shall be issued, no other warrant shall issue against the same ship, boat or vessel, unless the first warrant be suspended.

Notice on return
of warrant.

SEC. 8. Upon return being made to such warrant, the officer issuing the same shall thereupon immediately cause the notice herein-after specified, to be published in a newspaper printed in the county in which the warrant shall have been issued, if there be one; and if there be none printed in such county, then in a newspaper printed nearest to such county, or in such paper as the officer may direct, once in each week for twelve weeks successively.

Contents of no-
tice.

SEC. 9. Such notice shall contain the following matters:

1. It shall state the issuing of such warrant, and the name of the ship, boat or vessel seized, or a description of it; and, if known to such officer, the port or place to which she belongs, and the name of her last commander:

2. It shall require all persons who claim to have any demands against such ship, boat or vessel, her tackle, apparel or furniture, under the provisions of this chapter, to deliver an account of their respective claims or demands to such officer, within three months from the first publication of such notice, or that their remedy against such boat or vessel will be forfeited:

3. It shall state that such ship, boat or vessel, her tackle, apparel

and furniture, will be sold for the payment of the claims against it, unless the owner, consignee or commander thereof, or some person interested therein, appear and discharge such warrant according to law, within three months from the first publication of such notice.

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SEC. 10. Any person having any lien under the provisions of this chapter, upon the property so seized, may deliver to the said officer, an account in writing of his demand, accompanied by such affidavit as is hereinbefore prescribed in relation to the first application for a warrant; and he shall thereupon be deemed an attaching creditor, and be entitled to the same benefits, and subject to the same responsibilities, as the claimant at whose instance such warrant originally issued.

How other claimants may become attaching creditors.

SEC. 11. All liens under this chapter, upon the property so seized, an account of which shall not be presented to the said officer within the time limited in the notice, shall cease.

Liens not presented to cease.

SEC. 12. The owner, consignee, agent or commander, of any ship, boat or vessel seized by virtue of any warrant issued pursuant to the provisions of this chapter, and any person interested in such ship, boat or vessel, may, at any time before an order of sale shall be made, as hereinafter mentioned, apply in person or by attorney, to the officer who issued such warrant, for an order to discharge the same.

Application for discharge of vessel.

SEC. 13. Such person shall execute and deliver to the officer to whom such application is made, a bond to the creditors or claimants prosecuting such warrant, in a penalty at least double the amount of debts and claims sworn to as aforesaid, with such security as shall be approved by such officer, conditioned that the obligors therein will pay the amount of all such claims and demands as shall have been exhibited, which shall be established to have been subsisting liens upon such ship, boat or vessel, pursuant to the provisions of this chapter, at the time of exhibiting the same respectively.

Bond on such application.

SEC. 14. Upon such bond being executed and delivered, the said officer shall thereupon grant his order, discharging the warrant issued by him; and no further proceedings against the ship, boat or vessel so seized, shall be had under the provisions of this chapter, founded upon any demands included in said bond.

Proceedings to cease on giving bond.

SEC. 15. Every such bond shall be held for the common benefit of all the attaching creditors, and may be prosecuted by any of them jointly, or by any one of them separately, in respect to his separate demand.

By whom bond may be prosecuted.

SEC. 16. In the suit upon such bond, the attaching creditors respectively shall state in their declaration their respective demands, averring that the claim therefor was a subsisting lien on such ship, boat or vessel, at the time of the exhibition thereof, as hereinbefore provided; and shall assign as a breach of such bond, the non-payment of the claim of such creditor.

Averments in declaration.

SEC. 17. To such declaration the defendant may plead as in other actions on bonds, and may plead to such assignment of breaches; and the same proceedings shall be had on such bond, as provided by law on bonds with other conditions than for the payment of money; and the damages may be assessed, and judgment rendered, and execution be had thereon for such damages, in the same manner.

Pleadings and proceedings.

SEC. 18. If the creditors who shall have exhibited their claims as herein provided, shall not have been satisfied, and if such warrant shall not have been discharged as before provided, within the time

When vessel, &c. to be ordered sold.
3 Caines, 38.

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for that purpose limited, the officer who issued the same, within one month after the expiration of the time so limited, upon due proof of the publication of the notice hereinbefore required, shall issue his order to the sheriff who seized the ship, boat or vessel under such warrant, directing such sheriff to proceed to sell the boat or vessel so seized, her tackle, apparel and furniture, and shall state in such warrant the amount necessary to be raised to satisfy such claims and expenses.

When order of sale to be modified.

SEC. 19. If it shall appear to such officer, that the claims exhibited before him, and the expenses of the proceedings, can be satisfied by a sale of the tackle, apparel and furniture of such ship, boat or vessel, or some part thereof, without selling such vessel, he shall modify his order accordingly.

Sale by sheriff.

SEC. 20. Within twenty days after the service of such order, the sheriff shall proceed and sell the ship, boat or vessel so seized by him, her tackle, apparel and furniture, or such part thereof as shall be sufficient to satisfy the claims exhibited, and the expenses incurred, upon the same notice, in the same manner, and in all respects subject to the provisions of law in case of the sale of personal property upon execution.

Return of sheriff after sale.

SEC. 21. The sheriff shall return to the officer granting such order, his proceedings under the same; and the proceeds of such sale, after deducting his fees and expenses in seizing, preserving, watching and selling such ship, boat or vessel, shall be retained by such sheriff in his hands, to be distributed and paid as hereinafter directed.

Order for publishing notice of distribution.

SEC. 22. At the time of issuing any such order of sale, the officer granting the same shall order a notice to be published in the same newspaper in which the notice of seizure was published, as hereinbefore directed, once in each week, for three successive weeks, requiring all persons who have exhibited any claims against such ship, boat or vessel, and the owner, agent, consignee, master, and all other persons interested in such ship, boat or vessel, to appear before him at a day therein to be specified, not less than thirty days, nor more than forty days from the first publication of such notice, to attend a distribution of the proceeds arising from the sale of such ship, boat or vessel, her tackle, apparel and furniture.

Proceedings on day appointed in notice.
1 Wend., 39.

SEC. 23. On the day appointed in such notice, the officer shall hear the allegations and proofs of the parties, and make distribution of the proceeds arising from such sale, after deducting the expenses of the proceedings, among the creditors who shall have exhibited their claims as herein provided; unless the claims of such creditors, or some of them, be contested by the owner, agent, consignee or master of such ship, boat or vessel, or by some other of such creditors.

Proceedings if claim contested.

SEC. 24. In case of such contest, the party making the objection shall file with the officer a written statement thereof, and his request that the claims so objected to, be tried.

Powers of officer in determining contested claim.

SEC. 25. Upon such objection and request being filed, such officer shall possess all the powers necessary for the trial and determination of such claim, and shall proceed to hear and determine the same; and for that purpose may issue subpoenas, and compel the attendance of witnesses, in the same manner as justices of the peace are authorized by law to do in cases within their jurisdiction.

Proceedings if jury required.

SEC. 26. If, before proceeding to the trial of any such contested claim, either party shall request that the same be tried by a jury, such

jury shall be selected and summoned, and the same proceedings shall be had in all respects as upon the trial of a cause by a jury in a justice's court, except that the sheriff, if present, may perform the same duties in selecting, summoning, and keeping of the jury in such case, as constables are authorized to perform in cases in justices' courts, and the venire shall be directed to the sheriff or any constable of the county.

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SEC. 27. The determination of the officer, or the verdict of the jury, upon such trial, as the case may be, shall be final and conclusive between the parties, unless an appeal shall be taken therefrom to the circuit court for the same county, as hereinafter provided.

Effect of verdict, &c.

SEC. 28. Either party considering himself aggrieved by the determination of such officer, or the verdict of such jury, may appeal therefrom to the circuit court for the same county, within the same time, in the same manner, and a return may be compelled, and the same proceedings shall be thereupon had as near as may be, and with the like effect in all respects, as in cases of appeals from judgments rendered before justices of the peace, and costs shall be awarded and collected in such circuit court in the same manner.

Appeals, how taken.

SEC. 29. Upon the final determination of such claim, the officer before whom the proceedings were pending, shall proceed to make distribution of the proceeds of such ship, boat or vessel, her tackle, apparel and furniture, after deducting the expenses of the proceedings before him, among the attaching creditors, according to the amount due to each.

Distribution after determination of contested claim.

SEC. 30. When a distribution shall be made by such officer, pursuant to either of the foregoing provisions, he shall make an order on the sheriff having such proceeds in his hands, directing him to pay the same to the several attaching creditors entitled thereto, according to such distribution, and the same shall be paid accordingly; and all moneys remaining in the hands of such sheriff, after such payment, shall be paid to the owner, agent, consignee or master of such ship, boat or vessel.

Order for payment according to distribution. 1 Wend., 39.

SEC. 31. If the proceeds arising from the sale of any ship, boat or vessel, shall not be sufficient, after deducting all legal charges, to satisfy all the claims against it, exhibited and established as herein provided, the officer shall order a fair and just distribution of such proceeds among the creditors, whose claims shall have been ascertained as provided in this chapter, in a just and equal proportion to the amount of such claims respectively.

Apportionment of proceeds if insufficient to pay all claims.

SEC. 32. Every officer who shall issue any warrant pursuant to the foregoing provisions, shall cause the application, affidavits and proofs presented to him by the attaching creditors, and copies of all warrants issued, and of all orders made by him, with a list of the fees and expenses allowed by him, and a report of all the proceedings had or done by him, to be filed in the office of the clerk of the circuit court for the county in which the proceedings are had.

Officer issuing warrant to file report of proceedings with clerk of circuit court.

SEC. 33. Such report, and a copy thereof duly certified by the clerk, shall be conclusive evidence that the proceedings stated therein were had before such officer.

Effect of report, &c., as evidence.

SEC. 34. Upon such report being made, the court may correct any errors that shall appear to have been committed in the proceedings, and make such order as shall be just, and may remit the proceedings to the officer who issued the warrant, or the court may proceed to do such acts and things as shall be necessary in the premises.

Court may correct errors in proceedings.

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How sheriff may
be compelled to
return inventory,
&c.

When no proceed-
ings to be
had under this
chapter.

Penalties upon
defaulting jurors
and witnesses.

SEC. 35. Every sheriff to whom a warrant may have been delivered, may be compelled by the officer having jurisdiction of the proceedings thereon, to return the inventory required to be taken by him, and to pay over moneys in his hands, pursuant to any order for that purpose, by an order of such officer, and by process of attachment for disobedience thereto, on the application of any creditor.

SEC. 36. No proceedings under this chapter, to enforce the liens authorized by the provisions thereof, shall be had against any vessel which shall have been seized by virtue of process issuing from any court of the United States having admiralty jurisdiction, while such vessel is actually held under such seizure; nor against any vessel which shall have been sold by order of such court, except for debts contracted, or damages sustained after such sale; but nothing in this section contained shall be construed to impair the validity of any liens created by this chapter, the payment of which shall be decreed in any court of the United States.

SEC. 37. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing shall refuse to serve or to testify, in any proceeding had by virtue of this chapter, shall forfeit and pay for every such refusal, unless some reasonable excuse be shown, such fine, not exceeding ten dollars, as the officer before whom the proceedings are had shall think proper to impose; and such officer is authorised and empowered to issue an execution for the collection thereof, directed to the sheriff or any constable of the county, in the same manner, and with the like effect, as justices of the peace are authorized to do in cases of similar fines imposed by them.

CHAPTER 123.

PROCEEDINGS TO RECOVER THE POSSESSION OF LAND IN CERTAIN CASES.

Of Forcible Entries and Detainers.

In what cases en-
try not to be
made, &c.

SECTION 1. No person shall make any entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases, he shall not enter with force, but only in a peaceable manner.

Restoration of
possession, in
case of forcible
entry or detainer.

SEC. 2. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof, in the manner hereinafter provided.

Complaint may
be made.

SEC. 3. The person entitled to the possession of the premises, may make complaint in writing, and on oath, and deliver the same to a circuit court commissioner [or] a judge of the circuit or county court for the county, setting forth that the person complained of, is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be.

Process upon
complaint.

SEC. 4. Upon receiving such complaint, the officer to whom the same is delivered, shall issue his warrant, directed to the sheriff or

any constable of the same county, commanding him to apprehend the person named in such complaint, and to bring him forthwith before such officer, to answer such complaint; or such officer may, at the option of the complainant, issue a summons against the defendant, as hereinafter provided, in cases of tenants holding over after the expiration of their term, and the same proceedings may be thereupon had as in case of a tenant holding over after the expiration of his lease.

SEC. 5. The sheriff or constable to whom any such warrant shall be delivered, shall execute the same by arresting the defendant, and bringing him forthwith before the officer issuing such warrant, and shall thereupon notify the complainant of such arrest.

Warrant how executed.

SEC. 6. Upon the defendant being brought before such officer, on such warrant, he may plead not guilty to the complaint, or if he neglect or refuse to plead thereto, such officer shall enter such plea for him.

Pleading to complaint.

SEC. 7. On such issue being joined, the officer issuing the warrant shall possess all the power necessary for the trial and determination thereof, and shall proceed to hear and determine the same; and for that purpose may issue subpoenas for witnesses, and compel their attendance in like manner as justices of the peace are authorized to do in cases within their jurisdiction.

Powers of officer issuing warrant.

SEC. 8. If before proceeding to the trial of such issue, either the complainant or the defendant shall request that the same be tried by a jury, such jury shall be selected and summoned, and the same proceedings shall be had in all respects as upon the trial of a cause by a jury in a justice's court, except that the sheriff, if present, may perform the same duties in the selecting, summoning, and keeping of the jury in such case, as constables are authorized to perform in cases in justices' courts, and the venire shall be directed to the sheriff or any constable of the county.

When issue to be tried by jury.

SEC. 9. If such defendant shall be convicted upon a trial before such officer, or by the verdict of such jury, or upon a plea of guilty, to such complaint, the officer who issued the warrant shall thereupon enter a judgment that the complainant have restitution of the premises; and shall tax the costs and expenses for the complainant.

Judgment on conviction.

SEC. 10. The court shall thereupon issue a precept, commanding the sheriff or any constable of the county, to cause the complainant to be restored and put into full possession of the said premises; and shall also, in the same precept, or in a separate execution, direct the costs and expenses so taxed, to be levied and collected of the defendant, in the same manner as costs are or may be collected on judgments before justices of the peace, in personal actions.

Precept and execution to sheriff.

SEC. 11. If the complainant shall fail to prosecute his complaint, or if on such trial the defendant shall be found not guilty, judgment shall be rendered for the defendant for his costs, which shall be taxed and collected of the complainant, in the same manner hereinbefore provided for the collection of costs in favor of a complainant recovering judgment.

When judgment for defendant.

Summary Proceedings to recover the Possession of Land in other Cases.

SEC. 12. The person entitled to any premises, may recover possession thereof in the manner hereinafter provided in the following cases:

Other cases in which possession may be recovered.

1. When any person shall hold over any lands or tenements after the time for which they are demised or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds:

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2. When any rent shall have become due on any such lease or agreement, and the tenant or person in possession shall have neglected or refused, for fourteen days after demand of the possession made in writing, to deliver up possession of the premises, or pay the rent so due :

3. When any person shall continue in possession of any premises sold by virtue of any mortgage or execution, after the expiration of the time limited by law for the redemption of such premises :

4. When any tenant at will or by sufferance, shall hold over after the determination of his estate by a notice to quit, as provided by law.

Complaint may
be made.

SEC. 13. In the cases specified in the preceding section, the person entitled to the possession of the premises may make complaint in writing, and on oath, and deliver the same to a circuit court commissioner, or judge of the circuit or county court for the county, setting forth that the person complained of, is in possession of the lands or tenements in question, describing them, and that such person holds the same unlawfully, and against the right of the complainant.

Summons to be
issued.

SEC. 14. Upon receiving such complaint, the officer to whom the same is delivered shall issue a summons directed to the sheriff or any constable of the same county, commanding him to summon the defendant to be and appear before such officer, at a time and place therein to be specified, not less than three nor more than six days from the issuing thereof, to answer such complaint.

Service of sum-
mons.

SEC. 15. The officer to whom such summons shall be delivered, shall serve the same at least two days before the return day thereof, by reading the same to the defendant, if to be found within the county, and delivering to him a copy thereof, if required, or by leaving a true copy thereof certified by him, at the usual place of abode of such defendant, with some person of suitable age, to whom he shall explain the contents thereof.

Proceedings on
return.

SEC. 16. Upon the return of such summons, if the same be returned duly served, and the defendant appear, such defendant may plead not guilty to the complaint; or if he neglect or refuse to plead thereto, such officer shall enter such plea for him, and such issue shall be tried, and judgment shall be rendered, and the same proceedings shall be had thereon in all respects, and the costs shall be taxed and collected, in the same manner as in cases of forcible entry or detainment, and with the like effect.

When officer
may adjourn
hearing.

SEC. 17. If the defendant fail to appear on the return of such summons, and the same be returned duly served, the officer issuing such summons may, in his discretion, adjourn the hearing, not more than six days from the return of such summons, and on the day to which the hearing shall be adjourned, if the defendant appear, the same proceedings shall be had as if he had appeared at the return of the summons.

Hearing and
judgment.

SEC. 18. If the defendant fail to appear on the return of the summons, and there be no adjournment, or if the defendant fail to appear on the day to which the hearing may be adjourned, the officer shall note such failure in the minutes of his proceedings, and proceed to hear the complaint, and to inquire into the truth thereof; and if such officer shall be satisfied that such complaint is true, and that the complainant is entitled to restitution of the premises, he shall render judgment accordingly, and tax the costs for the complainant, and issue a writ of restitution, and process for the collection of the costs, as in other cases, and with the like effect.

General Provisions.

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SEC. 19. After an issue shall be joined upon any complaint in pursuance of the provisions of this chapter, the hearing may be adjourned from time to time, as may be necessary, upon sufficient cause being shown, not exceeding thirty days in all.

Adjournments after issue joined.

SEC. 20. If such hearing be adjourned on the application of a defendant, proceeded against by warrant for a forcible entry, or forcible detainer, and the complainant shall not consent thereto, such defendant shall continue, during the time of the adjournment, in the custody of the sheriff or constable, unless he shall give bond to the complainant, in the penal sum of fifty dollars, with sufficient surety to be approved by the officer issuing the warrant, conditioned to pay all such costs as shall be awarded against him in such cause.

When defendant to continue in custody or give bond.

SEC. 21. No restitution shall be made under the provisions of this chapter, of any lands or tenements, of which the party complained of, or his ancestors, or those under whom he holds the premises, shall have been in the quiet possession thereof for three years next before the filing of the complaint, unless his estate therein be ended.

When restitution not to be made.

SEC. 22. The officer before whom any proceedings shall be had for recovering the possession of lands in pursuance of this chapter, shall possess all the necessary powers for issuing subpoenas, and compelling the attendance of witnesses, and enforcing obedience to all orders and process lawfully made or issued by him.

Powers of officer in enforcing obedience to process &c.

SEC. 23. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve or testify in any cause prosecuted by virtue of this chapter, shall forfeit and pay for every such refusal, unless some reasonable excuse be shown, such fine, not exceeding ten dollars, as the officer before whom the proceedings are instituted shall think proper to impose; and such officer is authorized and required to issue an execution for the collection thereof, directed to the sheriff or any constable of the county, in the same manner, and with the like effect, as justices of the peace are authorized to do in cases of similar fines imposed by them.

Penalties on jurors and witnesses making default, &c.

SEC. 24. The complainant obtaining restitution of any premises under the provisions of this chapter, shall be entitled to an action of trespass, or trespass on the case against the defendant, and may recover treble damages from the time of the forcible entry, or forcible detainer, or of the notice to quit, or demand of possession, as the case may be; and all other damages to which he may be entitled.

Complainant obtaining restitution may recover damages.

SEC. 25. Either party conceiving himself aggrieved by the determination or judgment of the commissioner or judge, made or rendered under the provisions of this chapter, may appeal there (*therefrom*) to the circuit court for the same county, within the same time, in the same manner, and a return may be compelled, and the same proceedings shall be thereupon had, as near as may be, and with the like effect, as in cases of appeals from judgments rendered before justices of the peace to the county court, and costs shall be awarded and collected in the circuit court in the same manner.

Appeal.

SEC. 26. No writ of restitution shall be issued under the provisions of this chapter, until the expiration of ten days after the entry of judgment of restitution, and in case of an appeal within that time, no writ of restitution shall issue until such appeal be determined in the circuit court.

When writ of restitution not to issue on judgment.

SEC. 27. If upon the trial of an appeal in the circuit court, judgment

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When restitution
to be made after
determination of
appeal.

be rendered in favor of the complainant, upon delivering a certified copy of the entry thereof to the officer before whom the proceedings were commenced, he shall issue his precept for restoring to the complainant the possession of the premises in the manner hereinbefore provided.

CHAPTER 124.

OF THE ACTION OF REPLEVIN.

When action of
replevin may be
brought.
10 Wend., 349.
12 do. 133.

SECTION 1. Whenever any goods or chattels shall have been unlawfully taken, or unlawfully detained, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by such unlawful taking or detention, except in the cases hereinafter excepted.

When executors,
&c., may bring
action of replevin.

SEC. 2. Whenever, by any statute, executors or other persons, suing in the right of another, are authorized to maintain actions of trespass or trover, for any personal property, unlawfully taken or unlawfully detained, such persons may maintain actions of replevin for such property.

Venue.

SEC. 3. Actions of replevin shall be laid and tried in like manner as actions of trespass for injuries to personal property.

When replevin
shall not lie.
7 Wend., 485.

SEC. 4. No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine, in pursuance of any statute of this state.

Ib.
9 Cowen. 259.

SEC. 5. No replevin shall lie at the suit of the defendant in any execution or attachment, to recover goods or chattels seized by virtue thereof, unless such goods or chattels are exempted by law from such execution or attachment; nor shall a replevin lie at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken or detained.

Form of writ.

SEC. 6. Actions of replevin shall be commenced by writ, which shall be substantially in the following form:

"In the name of the people of the State of Michigan:

To the sheriff of the county of _____:

We command you that you do forthwith take into your custody the following goods and chattels, to wit: (describing the goods and chattels to be replevid,) and deliver the same to A. B., plaintiff herein, if he shall give you security as required by law to prosecute to effect this writ against C. D., defendant herein, and to return the aforesaid goods and chattels, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon; and also that you summon the said C. D. to appear before the _____ court, at _____, on the _____ day of _____, (some day on which writs in personal actions may be made returnable,) to answer the said A. B. concerning the unlawful detention of the said goods and chattels.

Witness, &c."

Affidavit to be annexed to writ.
12 Wend., 194.

SEC. 7. Such writ shall not be executed in any case, unless the plaintiff in the action, or some other person having a knowledge of the facts, shall make and annex to the writ an affidavit, stating that the

plaintiff in such action is then lawfully entitled to the possession of the property described in the writ ; that the same has not been taken for any tax, assessment or fine, levied by virtue of any law of this state ; nor seized under any execution or attachment against the goods and chattels of such plaintiff, liable to execution ; and that such goods and chattels are unlawfully detained by the defendant in such writ.

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SEC. 8. Upon the receipt of such writ, with the affidavit herein before required annexed, the sheriff shall proceed to seize and take into his custody the property described therein, and for that purpose may break open any house, stable, out-house or other building in which such property may be concealed, having first demanded deliverance thereof at the building or place where the same is concealed.

How writ executed.

SEC. 9. The officer executing the writ shall cause the property so seized to be appraised by one or more disinterested persons, on oath to be administered by him, as soon as may be after the taking thereof on such writ.

Property to be appraised.

SEC. 10. Before the officer shall deliver such property to the plaintiff, such plaintiff or some one in his behalf, shall execute a bond to such officer and his assigns, with the addition of his name of office, with sufficient sureties to be approved by such officer, in a penalty not less than one hundred dollars, and at least double the appraised value of such property ; conditioned that the plaintiff will prosecute the suit to effect, and that if the defendant recover judgment against him in the action, he will return the same property, if return thereof be adjudged, and will pay the defendant all such sums of money as may be recovered by such defendant against him in the said action.

Bond to be given before delivery of property to plaintiff.
6 Wend., 547.

SEC. 11. If the plaintiff shall fail to cause such bond to be executed and delivered to the officer, within twenty-four hours after the appraisal of such property, the officer shall return the same to the person from whom he took it.

When property to be returned.

SEC. 12. The officer shall summon the defendant according to the command of the writ, by delivering to him personally a certified copy of such writ, if such defendant can be found ; and if he cannot be found, then by leaving such certified copy at his usual place of abode, with some person of proper age.

How defendant to be summoned.

SEC. 13. If the goods and chattels specified in any writ of replevin shall not be found, or shall not be delivered to the plaintiff, he may proceed in the action for the recovery of the same or the value thereof.

Plaintiff may proceed if property not found, &c.

SEC. 14. The sheriff shall return the writ at or before the return day thereof, with the affidavit thereto annexed, and the names of the persons who executed the bond taken by him from the plaintiff, and their places of residence ; and he shall state in his return in what manner he executed the writ ; and if the goods and chattels specified therein shall not have been replevied, he shall state in his return the cause thereof.

Return of sheriff to writ.

SEC. 15. If the defendant in any action of replevin shall not be satisfied with the sufficiency of the sureties taken of the plaintiff by the officer, on the delivery of the property to such plaintiff, he may, within twenty days after the return of the writ, serve upon such officer a notice that he excepts to such securities, and such officer shall give notice thereof to the plaintiff or his attorney.

Exceptions to sureties.

SEC. 16. Within twenty days after the service of such notice on the officer, the sureties in the bond so executed by the plaintiff, shall justify by making an affidavit that each of them is a householder, with (*worth*)

Justification by sureties, &c.

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double the amount of the penalty of such bond, over and above all demands; or within the same time, a new bond, similar to that herein required before delivery to the plaintiff of the property replevied, shall be executed with new sureties, who shall justify in the same manner herein provided.

**Affidavits, &c.,
to be filed, and
notice given.**

SEC. 17. Such affidavits, and such bond when executed, shall be filed in the office of the clerk of the court to which the writ shall have been returned, and notice thereof shall be served on the defendant or his attorney, within the twenty days herein specified.

**When judgment
of discontinu-
ance to be ren-
dered against
plaintiff.**

SEC. 18. If such sureties shall not justify, or if such new bond shall not be executed and filed, and notice thereof given as herein provided, the court shall, at the next term after such default, render judgment of discontinuance against the plaintiff, and such other judgment as the state and nature of the case may require in order to restore to the defendant the property replevied, and to compensate him for his damages.

**Court may allow
new bond to be
filed.**

SEC. 19. But the court may allow the plaintiff to file such new bond, with sureties, who shall justify in the same manner herein prescribed, at the term at which application for such judgment is made, on such reasonable terms as the court shall impose; and upon such bond being filed, the cause shall proceed.

**When sheriff dis-
charged from
liability, &c.**

SEC. 20. If no exception shall be taken to the sureties in the bond given by a plaintiff in replevin, as herein provided, the sheriff shall be discharged from all liability for the sufficiency of such sureties; and the bond of the plaintiff shall be held by such sheriff for the benefit of the defendant, and shall be assigned to such defendant or his personal representatives, if judgment be rendered for him in such action.

**Liability of she-
riff in certain
cases, and his
remedy on bond.**

SEC. 21. If such exception shall have been made, and judgment of discontinuance shall be rendered against the plaintiff for his sureties not justifying, the sheriff shall be liable for the sufficiency of such sureties, as now provided by law; and such sheriff shall be entitled to the same remedy on the bond taken by him, as in cases of bonds given on the arrest of a defendant in personal actions; and all the provisions of law respecting the staying of proceedings against the sheriff, shall be applicable to actions by the sheriff on such replevin bond, and to actions against him in relation thereto.

**When clerk to
enter appearance
of defendant.**

SEC. 22. If the sheriff return to the writ of replevin, that the defendant has been duly summoned in either of the modes hereinbefore prescribed, the clerk of the court shall thereupon enter the appearance of such defendant; and thereafter proceedings shall be had against such defendant, as if he had actually appeared.

Declaring, &c.

SEC. 23. The plaintiff shall declare within the same time, and in case he shall neglect so to do, shall be liable to the like judgment of discontinuance as in personal actions; and upon filing a declaration, the plaintiff shall be entitled to the like rule to plead, and notice thereof shall be given, in like manner as in personal actions.

**Form of declara-
tion.**

SEC. 24. It shall be sufficient for the plaintiff in his declaration, whether the original taking was lawful or otherwise, to allege with requisite certainty of time, place and value, that the defendant received the property to be delivered to the plaintiff when thereunto afterwards requested, and that the defendant, although requested so to do, has not delivered the same to the plaintiff, but hath unlawfully detained the same to the damage of the plaintiff, such sum as he may specify.

SEC. 25. It shall not be necessary for the plaintiff to state in his declaration, a place certain within the township, city or village, as that where the property was detained.

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Stating place of
detention.
Plea and notice.

SEC. 26. The defendant may plead the general issue to such declaration, which shall be in the same form as in personal actions, and shall put in issue not only the detention of the property, but also the property of the plaintiff therein, and his right to the possession thereof at the time of the commencement of the suit, and under such plea the defendant may give notice of any special matter of defence to the action.

SEC. 27. After issue joined in any action of replevin, either party may give notice of trial, and if neither party shall have noticed the cause for trial, the defendant may move for judgment as in case of non-suit, in the same manner as in personal actions.

Notice of trial,
&c.
9 Wend., 497.

SEC. 28. If, upon the trial of the cause, the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unlawful taking and detention, or by the unlawful detention of the property; but if judgment pass for the plaintiff by default, or upon an issue of law, the damages may be assessed by the court, in the same manner as in personal actions.

Assessing dama-
ges for plaintiff.

SEC. 29. When either of the parties to an action of replevin, at the time of the commencement of the suit, shall have only a lien upon, or special property in the goods and chattels described in the writ, and is not the general owner thereof, that fact may be proved on the trial, and the jury shall find according to such fact by their verdict; and the court shall thereupon render such judgment as shall be just between the parties.

Verdict and judg-
ment in case of
special property
in goods, &c.
1841, p. 54.

SEC. 30. If the goods and chattels specified in the declaration, shall not have been replevied and delivered to the plaintiff, such plaintiff, in case he shall recover upon the whole record, shall be entitled, in addition to his damages and costs, to a further judgment that such goods and chattels be replevied and delivered to him without delay; or in default thereof, that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed.

Judgment for
plaintiff, in case
property not de-
livered to him.

SEC. 31. The execution to be issued upon such judgment, shall command the sheriff to levy the plaintiff's damages and costs, of the goods and chattels, lands and tenements of the defendant, as in other executions against property; and also to replevy the goods and chattels described in the declaration, which shall also be specified in the execution, and to deliver them to the plaintiff, if they can be found within his county, and if the same cannot be found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs, of the goods and chattels, lands and tenements of the defendant, as above provided.

Contents of exe-
cution in such
case.

SEC. 32. The sheriff shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions, and he shall possess the same powers in respect to the replevying of the property described therein, as are herein provided upon the execution of writs of replevin; and if the goods and chattels described in the execution, are replevied and delivered to the plaintiff, they shall be irrepleviable.

Powers and du-
ties of sheriff on
execution.

SEC. 33. If the property specified in the writ shall have been de-

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Judgment for defendant on non-suit, &c.

livered to the plaintiff, and the defendant recover judgment by discontinuance or non-suit, such judgment shall be, that the defendant have return of the goods and chattels replevied, unless he shall elect to waive such return as hereinafter provided; and also that he recover the damages sustained by him by reason of the detention of such goods and chattels, which damages shall be assessed by a jury in the proper court.

When defendant may take judgment for value of property.
12 Wend., 134.

SEC. 34. Whenever the defendant shall be entitled to a return of the property replevied, instead of taking judgment for such return, as above provided, he may take judgment for the value of the property replevied; in which case, such value shall be assessed by the jury on the trial, or upon the assessment of damages, as the case may be.

Notice of assessment of damages.

SEC. 35. Whenever any damages shall be assessed, pursuant to any provisions contained in this chapter, the same notice thereof shall be given to the adverse party, as is required by law, and the practice of the court in the like cases in personal actions.

When judgment for defendant to be for costs only.

SEC. 36. If the property specified in the writ, shall not have been replevied and delivered to the plaintiff, and the defendant recover judgment, such judgment shall be for costs only.

Effect of judgment for return of property.

SEC. 37. Whenever judgment shall pass against the plaintiff in replevin, whether by default or otherwise, and a return of the property is awarded, no writ of second deliverance shall be allowed, nor shall any second or other writ of replevin be brought for the same cause, but the plaintiff in replevin shall not thereby be barred from bringing an action of trespass or trover for the same property, unless the judgment in the action of replevin shall have passed against him on the merits.

Property to be held subject to attachment in certain cases.
1839, p. 230, § 44.

SEC. 38. If any goods or chattels which are replevied, had been attached, they shall, in case of judgment for a return, be held liable to the attachment, until final judgment in the suit in which they were attached, and for thirty days thereafter, in order to their being taken in execution; and if such final judgment be rendered before the return of the property, or if the property when replevied, was seized and held on execution, it shall be held subject to the same attachment or seizure, for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed, in like manner as it might have been if such property had not been replevied.

Suit on plaintiff's bond.
18 Wend., 334.
12 do., 122.

SEC. 39. If any writ of return, or other execution, issued in favor of the defendant in the action, shall be returned unsatisfied in whole or in part, such defendant or his representatives may have an action upon the bond executed by or on behalf of the plaintiff, to recover against the obligors therein the value of the property replevied, and the moneys, damages and costs awarded to such defendant, and such bond shall be assigned to such defendant or his representatives, on their request.

Proceedings; damages to be recovered.

SEC. 40. In such action the plaintiff shall assign breaches of the condition of such bond, as in other cases; and the return of the sheriff to the execution issued in the action of replevin, shall be evidence of such breach; the amount recovered in such action of replevin, and remaining uncollected, shall be the measure of the damages, if the value of the property replevied shall have been so recovered, and if not so recovered, and a return thereof shall have been awarded, such value shall be added to the damages and costs recovered in the action of replevin, and the amount of such value, damages and costs, remaining uncollected, shall form the measure of damages.

SEC. 41. In any action prosecuted on such bond given by the plaintiff in an action of replevin for the deliverance of any property, the defendant may show in mitigation of the damages, that the plaintiff in such action had only a lien upon such property and the amount of such lien; and if such amount, with interest, be less than the value of the property replevied, a corresponding deduction shall be made from such value.

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CHAPTER 125.
Mitigation in certain cases.

CHAPTER 125.

OF DISTRAINING AND REPLEVYING BEASTS.

Of Distraining Beasts.

SECTION 1. When any beasts are taken up and distrained by any person, for going at large, contrary to law, or contrary to any by-law of a township, they shall be forthwith impounded in the township pound, and the keeper of such pound shall furnish them with suitable food and water, so long as they are detained in his custody.

Beasts distrained to be impounded.

SEC. 2. The person so taking up and distraining the same, shall be entitled to fifty cents per head for all horses, mules, asses and neat cattle, and ten cents per head for all sheep, goats and swine, so distrained by him; and the pound keeper shall be entitled to four cents per head for all the said animals so impounded.

Fees for distraining, and impounding.

SEC. 3. The pound keeper shall not deliver to the owner any beasts so impounded, until such owner shall pay him his fees and the expense of keeping such beasts, and also the fees due the person distraining said beasts, which last mentioned fees he shall pay to such person.

Beasts not to be delivered until fees and expenses paid.

SEC. 4. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, he may recover his damages in an action of trespass, or trespass on the case, against the owner of the beasts, or against the person having the care and control of such beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom in consequence of the neglect of the person who has suffered the damage, to maintain his part of the division fences, the owner or person having the control of the beasts shall not be liable for such damage.

Proceedings in case of injury by beasts.

SEC. 5. The beasts so distrained for doing damage, shall be impounded in the township pound, if there be one, and the distrainer shall leave with the pound keeper a memorandum in writing, signed by him, stating the cause of distraining, and the sum that he demands from the owner, for the damages done by the beasts.

Impounding beasts doing damage.

SEC. 6. The pound keeper shall not deliver the beasts to the owner, until such owner shall pay him his fees, and the expense of keeping such beasts, together with the sum so demanded by the distrainer, and the expense of advertising such beasts, if they shall have been advertised, and all other legal costs and expenses.

Beasts not to be delivered until damages, fees and expenses paid.

SEC. 7. If there shall be no public pound within the township, the beasts shall be impounded in some suitable place under the immediate

When person impounding beasts to have care of them.

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care and inspection of the person who distrained them, and he shall furnish them with suitable food and water so long as they remain impounded.

Notice to owner,
&c.

SEC. 8. When beasts are impounded for either of the causes aforesaid, the person impounding them shall, within twenty-four hours thereafter, give notice thereof to the owner or person having the care or control of them, if known, and living within six miles from the place of impounding, which notice shall be delivered to the party, or left at his place of abode, and shall contain a description of the beasts, and a statement of the time, place and cause of impounding.

When notice to
be posted up in
public places.

SEC. 9. If there shall be no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall, within forty-eight hours thereafter, cause to be posted up in three public places in the township, and in a public place in each of any two adjoining townships, if within four miles from the place where they were taken, a written notice, containing a description of the beasts, and a statement of the time, place and cause of impounding.

When notice to
be published in
newspaper.

SEC. 10. In case notice shall be given by posting up the same, if no person shall appear to claim the beasts within seven days after the day of impounding, a like notice shall be published for three successive weeks, in some public newspaper, if any there shall be published within twenty miles of the place of impounding, the first publication to be within fifteen days after the day of impounding.

Proceedings if
owner dissatis-
fied with claim.

SEC. 11. If the owner or keeper of the beasts shall be dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable, ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace; and the sum determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

Ib.

SEC. 12. If the sum for which the beasts are impounded and detained, shall not be paid within fourteen days after notice of the impounding shall have been given, as before directed, or after the last publication of such notice in a newspaper, and shall not have been determined as aforesaid, the person who impounded them shall apply to a justice of the peace, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice; and the persons so appointed and sworn, shall ascertain and determine the sum due from the owner or keeper of the beasts, for the damages, costs and expenses for which they are impounded and detained, including a reasonable compensation for their own services.

If sum not paid,
beasts to be sold.

SEC. 13. If the sum so found to be due, shall not be forthwith paid, the person who impounded the beasts shall cause them to be sold by auction in the township where they are impounded, first advertising the sale by posting up a notice thereof in three public places in the same township, at least five days before such sale.

How proceeds
disposed of.

SEC. 14. The proceeds of the sale, after paying all the said damages, costs and expenses, with the charges for advertising and selling the beasts, shall be deposited in the treasury of the township, for the use of the owner of the beasts, in case he shall substantiate his claim thereto, within two years from the time of sale.

SEC. 15. If any beasts that shall have been lawfully distrained or

impounded, shall escape or be rescued, the pound-keeper or person who distrained them, may, at any time within seven days thereafter, retake such beasts, and hold and dispose thereof, as if no escape or rescue had taken place.

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Beasts escaped or rescued may be retaken.

Penalty for rescuing beasts distrained.

SEC. 16. If any person shall rescue any beasts, distrained or impounded for any cause, he shall be liable to an action on the case, to be brought by any person injured, to pay all damages which such person shall have sustained thereby, and all the fees and charges which shall have been incurred before the rescue, and shall also forfeit a sum not less than five, nor more than twenty dollars.

SEC. 17. The defendant in any action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is any ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin, to be brought as provided in the following sections.

Legality of distress to be tried only in action of replevin.

Replevin of Beasts Distrained.

SEC. 18. Any person whose beasts are distrained or impounded, in order to recover any penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for any damages alleged to have been done by them, may have a writ of replevin therefor out of the proper court, and the same proceedings shall be had thereon as in other cases of replevin, except as hereinafter provided.

Owner may have writ of replevin.

SEC. 19. Such writ shall not be executed in any case, unless the plaintiff in the action, or some person knowing the facts, shall make and annex to the writ an affidavit stating therein that the beasts, describing them, have been distrained or impounded, and are detained by the defendant, and that the plaintiff therein is the owner of such beasts, or that he has a lawful right to the possession thereof.

Affidavit to be annexed to writ.

SEC. 20. The writ shall be served, and the property shall be appraised, and before delivery thereof to the plaintiff, a bond shall be given, in like manner, and with the same effect as in other cases of replevin; but such property shall not be removed by the officer until such bond shall be given; and if such bond be not given within the time limited for that purpose, the property shall be relinquished by the sheriff, and such failure shall be deemed a discontinuance of the suit by the plaintiff.

Bond to be given; consequence of failure.

SEC. 21. If the beasts shall be replevied and delivered to the plaintiff, and judgment of non-suit or of discontinuance be rendered against the plaintiff, or if it appear on the trial, that the beasts were lawfully distrained, the defendant shall have judgment for such sum as shall be due from the plaintiff, for the penalty or forfeiture, or for the damages for which the beasts were impounded, together with all the lawful fees, costs, charges and expenses incurred by reason of the distress, to be assessed as in other cases, and also his costs of the action of replevin.

Judgment for defendant, how to be rendered.

SEC. 22. If the plaintiff shall recover judgment against the defendant by default, or if it shall appear upon the trial, that the beasts were distrained without any sufficient or justifiable cause, the plaintiff shall recover his damages caused by the unlawful detention of such

Judgment for plaintiff.

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beasts, to be assessed as in other actions of replevin, together with his costs of suit.

CHAPTER 126.

OF THE LIEN OF MECHANICS AND OTHERS.

Of certain Liens upon Real Property.

Lien on real property for labor and materials in certain cases, 1840, p. 40.

SECTION 1. Every person who shall, by contract with the owner of any piece of land, furnish labor or materials for erecting or repairing any building, or the appurtenances of any building, on such land, shall have a lien upon the whole piece of land, not exceeding one quarter of a section, including such building, in the manner herein-after provided, for the amount due to him for such labor or materials.

Lien not to attach unless contract in writing, &c.

SEC. 2. Such lien shall not attach unless the contract is made in writing, and signed by the owner of the land, or by some person duly authorized by him, and acknowledged, and recorded in the office of the register of deeds of the county where the land lies.

When lien dissolved.

SEC. 3. The lien shall be dissolved at the expiration of six months after the time when the money due by the contract, or the last instalment thereof, shall become due and payable, unless proceedings for enforcing the lien shall have been commenced within the said six months.

When creditor may apply for order to sell.

SEC. 4. When any sum due by such contract, shall remain unpaid for the space of sixty days after the same is payable, the creditor may, upon a petition to the circuit or county court for the county in which the land lies, obtain an order for the sale thereof, and for applying the proceeds to the discharge of his demand.

Contents of petition.

SEC. 5. The petition may be filed, either in term, or in vacation, and shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances, and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the demand.

Order that owner appear and answer.

SEC. 6. Upon filing the petition, an order may be entered of course, that the owner of the land appear and answer such petition within twenty days after service of notice of such order, and of a copy of the petition upon such owner.

Notice of order and copy of petition to be served.

SEC. 7. Notice of such order, and a copy of the petition, shall be personally served upon such owner, if he resides within this state, and notice of the filing of the petition and entry of such order, shall also be served upon all other creditors who shall have a similar lien upon the same lands.

When notice to be published in newspaper, &c.

SEC. 8. If it shall satisfactorily appear to the court that such owner resides out of this state, such court shall make an order that notice of filing such petition be given to all persons interested, by publishing the same, together with the substance of the petition, in some public newspaper printed or circulating within the county, for six successive weeks.

Contesting claims.

SEC. 9. Every creditor having a lien of the kind before mentioned, upon the same land, may appear and prove his claim, and the owner

may appear and disprove the same, and each of said creditors shall have a right to contest the claim of every other creditor; and the court shall hear and determine the several claims in a summary manner, either with or without a jury, as the case may require.

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SEC. 10. Every material question of fact shall be submitted to a jury, if required by either party, or if it shall be thought proper by the court; and such trial shall be had upon a question stated, or upon an issue formed under the direction of the court, or otherwise, as the court shall order.

Trial of questions by jury.

SEC. 11. The court shall examine all the claims that shall be presented, and shall ascertain and determine the amount due to each creditor who has a lien of the kind before mentioned, upon the estate in question, and every such claim that is due absolutely and without any condition, although not then payable, shall be allowed with a rebate of interest to the time when it would become payable.

All claims presented to be determined.

SEC. 12. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof the other party shall, without his fault, have been prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much thereof as he has performed, in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

Part performance of contract

SEC. 13. If the lien shall be established in favor of any of the creditors whose claims are presented, whether the petitioning creditor or any other, the court shall order a sale of the premises to be made by the sheriff or any master in chancery of the same county.

When sale of premises ordered.

SEC. 14. If any part of the premises can be separated from the residue and sold, without damage to the whole, and if the value thereof shall be sufficient to satisfy all the claims proved in the case, the court may order a sale of that part, if it shall appear to be most for the interest of all the parties concerned.

When part may be sold.

SEC. 15. The officer who makes the sale shall give notice of the time and place appointed therefor in the manner prescribed in relation to the sale of real estate on executions, unless the court shall order other or different notice to be given, and such officer shall give to the purchaser a certificate of the sale, in like manner as certificates are required to be given on a sale upon execution, and with the same effect.

Notice of sale and certificate of purchase.

SEC. 16. All lands sold under such order of the court, may be redeemed in like manner, and upon the same terms as are provided in the case of a sale of real estate on execution.

Redemption of lands sold.

SEC. 17. If the claims against the estate are all ascertained at the time of ordering the sale, the court may at the same time, order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, to the amount of their respective claims, if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each of them.

Distribution of proceeds, when and how made.

SEC. 18. If the claims shall not all have been ascertained when the sale is ordered, or if, for any other reason, it shall be deemed proper to postpone the order of distribution, the court may direct the officer to bring the proceeds of sale into court, to be disposed of according to the order of such court; and if in consequence of the claims of attaching creditors, or for any other cause, the whole cannot be pro-

1b.

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How surplus dis-
posed of.

perly distributed at once, the court may make two or more successive orders of distribution, as the circumstances may require.

SEC. 19. If there be any surplus of the proceeds of the sale, after making all the payments before mentioned, it shall be forthwith paid over to the owner of the land; but such surplus shall be liable to be attached or taken in execution, in like manner as if it proceeded from a sale made on an execution.

When and how
far, attaching cre-
ditor to be pre-
ferred.

SEC. 20. If the land to which any such contract relates, shall be under attachment at the time of recording the contract, the attaching creditor shall be preferred, to the extent of the value of the land and buildings, as they may be when the contract shall be recorded, and the court shall ascertain, by a jury or otherwise, as the case may require, what portion of the proceeds of the sale shall be held subject to the attachment, as derived from the value of the premises when the contract was recorded.

1b.

SEC. 21. If the attaching creditor in such case, shall recover in his suit, he shall be entitled to receive on his execution the said proportion of the proceeds that are held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue, if any, of the proceeds of the sale, shall be applied in the same manner as if there had been no such attachment.

Case of subse-
quent attach-
ment.

SEC. 22. If the land to which the contract relates shall be attached after the recording of the contract, the proceeds shall be applied, after discharging all prior liens and claims, so far as shall be necessary, or so far as the same will extend, to satisfy the execution of such attaching creditor.

Case of an inter-
vening attach-
ment.

SEC. 23. If an attachment is made after the recording of such contract, and if, after the attachment, another such contract shall be recorded, the creditor in the latter contract shall be entitled to be paid only out of the residue of the proceeds, if any, remaining after satisfying the attaching creditor, and also paying all that is due on the contracts that were recorded before the attachment.

Rights of attach-
ing creditors and
contractors
among them-
selves.

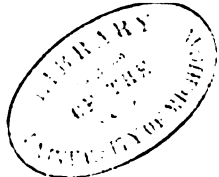
SEC. 24. When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their respective attachments, but when several creditors who are entitled to the lien provided for in this chapter, have all equal rights as between themselves, and the fund shall be insufficient to pay the whole, they shall share it equally in proportion to their respective claims.

Debtor having a
life estate, &c.

SEC. 25. If the person who procures the work to be done, has an estate for life only, or any other estate less than a fee simple, in the land on which the work is done, or if the land, at the time of recording the contract is mortgaged, or under any other incumbrance, the person who procures the work to be done shall nevertheless be considered as the owner, for the purposes of this chapter, to the extent of his right and interest in the land; and the lien before provided for shall bind his whole estate and interest therein, in like manner as a mortgage would have done, and the creditor may cause the right of redemption, or whatever other estate or interest such person had in the land, to be sold and applied to the discharge of his claim, according to the provisions of this chapter.

Lien may be en-
forced against
heirs and assigns.

SEC. 26. If the person indebted in any such contract shall die, or shall convey away his estate, before the commencement of suit on the contract, the suit may be prosecuted against his heirs, or whoever



shall hold the estate which he had in the premises at the time of making the contract, or if a suit is commenced in his life time, it may be prosecuted against his representatives or assigns, in like manner as if the estate had been mortgaged to secure the debt.

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SEC. 27. If the creditor in such contract shall die before the commencement of a suit thereon, the suit may be prosecuted by his executors or administrators, or if commenced in his life time, it may be prosecuted by them, as it might have been by the deceased, if living.

Suit may be prosecuted by representatives.

SEC. 28. If it appear in any stage of the proceedings under this chapter, that the suit was commenced by the petitioning creditor before the expiration of the sixty days, or after the expiration of six months, in that behalf before limited, or if the petitioning creditor become non-suit or from any cause fail to establish his claim, the suit may nevertheless be prosecuted by any other creditor having such a lien, in the same manner as if it had been originally commenced by the latter creditor, if the circumstances of the case are such that he might then, or at any time after the commencement of the original suit, have commenced a like suit on his own claim.

Suit commenced by one creditor may be prosecuted by a nother in certain cases.

SEC. 29. If the suit is commenced by the petitioning creditor, before the expiration of the sixty days in that behalf limited, his claim may nevertheless be allowed, if he is otherwise entitled thereto, and if the suit is prosecuted by any other creditor as provided in the preceding section; but he shall not in such case be entitled to any costs, and he may be compelled to pay the costs that shall be incurred by the debtor, or any part thereof, as the court shall deem reasonable.

When creditor's claim may be allowed, though suit prematurely commenced, &c.

SEC. 30. The costs in all other cases shall be subject to the discretion of the court, and shall be paid out of the proceeds of the sale, or by any of the parties in the suit, as justice and equity may require.

Costs.

SEC. 31. Nothing contained in this chapter shall be construed to prevent any creditor in such contract from maintaining an action thereon at the common law, in like manner as if he had no such lien for the security of his debt.

Action at common law not prevented.

SEC. 32. The register of deeds shall receive and record all contracts of the kind mentioned in this chapter, that shall be delivered to him for that purpose, and he shall be entitled to the same fees therefor, as for recording deeds or other papers.

Registers to record contracts, &c.

SEC. 33. When the debt secured by such lien shall be fully paid, the creditor shall, at the expense of the debtor, enter on the margin of the record of such contract, a discharge of his said lien, or shall execute a deed of release therefor (*thereof*), in like manner as is provided in relation to the discharge of mortgages, after the payment thereof.

Creditor to discharge lien on payment, &c.

SEC. 34. Every petition filed by any person not a resident of this state, in pursuance of this chapter, shall be endorsed in the same manner that declarations are required to be endorsed in the like cases, by some responsible person as security for costs, and the regulations concerning the endorsement of declarations shall apply to the endorsement of such petition.

Indorsement of petition by surety for costs.

Of certain Liens upon Personal Property.

SEC. 35. Whenever any person shall deliver to any mechanic, artisan or tradesman, any materials or articles for the purpose of constructing, in whole or in part, or completing any furniture, jewelry, implement, utensil, clothing or other article of value, to be altered,

Lien of mechanics, &c., on personal property in certain cases.

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fitted or repaired, such mechanic, artizan or tradesman shall have a lien thereon for the just value of the labor and skill applied thereto by him, and for any materials which he may have furnished in the construction or completion thereof, and may retain possession of the same until such charges are paid.

1b. SEC. 36. When any person shall deliver to any mechanic, artizan, or tradesman, any watch, clock, article of furniture or jewelry, implement, clothing or other article of value; to be altered, fitted or repaired, such mechanic, artizan or tradesman shall have a lien thereon for the just value of the labor and skill applied thereto by him, and may retain possession of the same until such charges are paid.

When lien may be enforced.

SEC. 37. In either of the cases mentioned in the two preceding sections, if the owner of the property or materials so delivered, or the person entitled thereto, shall not, when such articles shall have been constructed, completed, altered, fitted or repaired, and ready to be delivered to such owner, or other person, and the charges thereon shall be due and payable, pay to such mechanic, artizan or tradesman, the amount of such charges, the person having such lien may enforce the same as hereinafter provided.

Suit for recovery of charges.

SEC. 38. The person having such lien may commence a suit for the recovery of such charges, by summons in the usual form, before any justice of the peace of the city or township in which he resides, or in any court, as the case may require, against the person liable for the payment thereof.

Proceedings in case summons returned personally served.

SEC. 39. If such summons be returned personally served upon the defendant, the same proceedings shall thereupon be had, in all respects, as in other suits commenced by summons, in which there is a personal service of process, and judgment shall be rendered in such suit in like manner.

Proceedings if defendant cannot be found.

SEC. 40. If the officer return upon such summons, that the defendant cannot be found within his county, the same proceedings shall be thereupon had, in all respects, as near as may be, as in suits commenced by attachment, in which there is not a personal service of a copy of the attachment upon the defendant, and judgment shall be rendered in such suit in like manner.

Effect of judgment.

SEC. 41. If the plaintiff recover judgment in such suit, execution shall issue thereon in the same manner and with the like effect, as upon judgments rendered in suits commenced by attachment, and the property upon which the plaintiff holds such lien, or so much thereof as shall be sufficient to satisfy such execution, may be sold thereon in the same manner as if it had been seized and held upon an attachment in such suit.

Enforcing liens in other cases.

SEC. 42. The provisions of this chapter concerning liens upon personal property, and enforcing the same, shall apply to all cases of personal property on which the bailee or keeper thereof has by law a lien for any keeping, feed, care or labor by him bestowed upon such property.

Expense of keeping beasts, when to be an additional lien.

SEC. 43. If the property upon which any such lien shall be enforced as provided in this chapter, consist of horses, cattle, sheep, swine, or other beasts, and any expenses shall have been incurred by the person having such lien after the same accrued, in keeping and taking care of such property, the amount of such expenses shall be an additional lien upon the property, and shall be computed and ascertained upon the trial, or assessment of damages, and included in the judgment.

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OF THE DISPOSITION OF UNCLAIMED PROPERTY IN CERTAIN CASES.

SECTION 1. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf keeper, ware house keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book to be provided and kept by him for that purpose, a description of such property, with the date of the reception thereof.

Description and date of reception of property to be entered in certain cases.
1839, p. 112.
1840, p. 133.

SEC. 2. If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or otherwise disposed of according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody, shall immediately notify such owner by letter, to be directed to him, and deposited in a post-office, to be transmitted by mail, of the reception of such property.

When notice to be given to owner by letter.

SEC. 3. In case any such property shall remain unclaimed for three months after its reception as aforesaid, the person having possession thereof shall cause a notice to be published once in each week for four successive weeks in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided.

Notice, when and how to be published.

SEC. 4. In case the owner or person entitled to such property shall not, within three months after the first publication of such notice, claim such property and pay the lawful charges thereon, including the expense of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county, an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

Proceeding if property remain unclaimed.

SEC. 5. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand, that the property therein described, be sold by any constable of the city or township where the same shall be, at public auction, upon due notice.

Inventory and order for sale, when to be made by justice.

SEC. 6. It shall be the duty of the constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three public places in the city or township, and to sell such property at public auction, for the highest price he can obtain therefor.

Constable to give notice and sell property.

SEC. 7. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings upon such order, and deliver the same to such justice, together with the inventory, and the proceeds of the sale, after deducting his fees, which shall be the same as upon an execution.

Return of constable.

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proceeds, &c.

SEC. 8. From the proceeds of such sale, the justice shall pay the charges and expenses legally incurred in respect to such property, or a rateable proportion to each claimant, if there be not sufficient for the payment of the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to one dollar for each day's services rendered by him in such proceedings.

Inventory, &c.,
to be delivered to
county treasurer.

SEC. 9. Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory and order of sale and return hereinbefore mentioned, together with a statement of the charges and expenses incurred in respect to such property, as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale, remaining after payment of such charges, expenses and fees.

Entry, &c. to be
made by treasurer.

SEC. 10. The treasurer shall file in his office, and safely keep all the papers so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office.

When owner
may receive
amount deposited
with treasurer.

SEC. 11. If the owner of the property sold, or his legal representatives shall, at any time within five years after such moneys shall be deposited in the county treasury, furnish satisfactory evidence to the treasurer, of the ownership of such property, he or they shall be entitled to receive from such treasurer, the amount so deposited with him.

If amount not
paid to owner, to
be paid into the
state treasury.

SEC. 12. If the amount so deposited with any county treasurer, shall not be paid to such owner or his legal representatives within the said five years, such county treasurer shall pay such amount into the state treasury, to the credit of the general fund.

CHAPTER 128.

OF THE COLLECTION OF PENALTIES, FORFEITURES AND FINES, AND OF
FORFEITED RECOGNIZANCES.*Of the Collection of Penalties and Forfeitures.*What penalties,
&c. may be recovered
by action.

SECTION 1. In all cases not otherwise specially provided for by law, where a pecuniary penalty or forfeiture shall be incurred by any person, and the act or omission for which the same is imposed, shall not be also a misdemeanor, such penalty or forfeiture may be recovered in an action of debt, or in an action of assumpsit; and if it be a forfeiture of any property, it may be sued for and recovered in an action of trover, or other appropriate action.

Action, how
brought and conducted.

SEC. 2. Every such action shall be brought in the name of the people of the state of Michigan, and shall be conducted and prosecuted in the same manner as personal actions, and shall be subject to all the provisions of law concerning personal actions, not repugnant to the provisions of this chapter.

Jurisdiction of
justices.

SEC. 3. Justices of the peace shall have jurisdiction of all actions

for the recovery of penalties or forfeitures, where the amount of the penalty or forfeiture shall not exceed one hundred dollars.

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SEC. 4. Every action for a penalty or forfeiture, shall be brought in the county where the act was done, or where the act omitted was required, in whole or in part, to be done, upon which the penalty or forfeiture attached.

Where to be brought.

SEC. 5. In actions of debt brought to recover any penalty or forfeiture imposed by any statute, it shall be sufficient, without setting forth the special matter, to allege in the declaration, that the defendant is indebted to the plaintiffs in the amount of such penalty or forfeiture; whereby an action hath accrued according to the provisions of the statute by which such penalty or forfeiture is imposed, specifying the section and chapter, as the case may require, or in some other similar terms, referring to such statute.

How to declare in debt.

SEC. 6. Whenever an action of assumpsit shall be brought for the recovery of any penalty or forfeiture imposed by any statute, it shall be sufficient, without setting forth the special matter, to allege in the declaration, that the defendant, being indebted to the plaintiffs in the amount of such penalty or forfeiture, according to the provisions of the statute by which such penalty or forfeiture is imposed, referring to such statute as prescribed in the last section, undertook and promised to pay the same.

Ib., in assumpsit.

SEC. 7. If an action of trover be brought to recover any goods or other things forfeited by the provisions of any statute, the declaration may allege that such goods or other things were forfeited according to the provisions of such statute, referring to the same as prescribed in the foregoing sections, and that the defendant converted the same to his own use, without setting forth the special matter.

Ib., in trover.

SEC. 8. To every declaration for a penalty or forfeiture, the defendant may plead the general issue, which shall be in the same form as in personal actions; and may give in evidence under such plea any special matter in bar of the action, or in discharge of the defendant therefrom, in the same manner, and with the like effect as if a special notice thereof had been given.

Plea and evidence.

SEC. 9. When a penalty or forfeiture is imposed by law for any act or omission, not exceeding any specified sum, an action may be brought for the highest sum so specified; and the jury, or justice before whom the trial shall be had, shall award the sum so specified, to the plaintiff, or such part thereof, within the limitation prescribed by law, as shall be deemed proportionate to the offence.

Where amount is not specified.

SEC. 10. In all cases where the penalty or forfeiture shall be one hundred dollars or more, such penalty or forfeiture may be recovered by indictment in the proper court of the county.

When may be recovered by indictment.

SEC. 11. When any act or omission is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty, or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor.

When act or omission to be a misdemeanor.

SEC. 12. It shall be the duty of every supervisor, whenever he shall know, or have good reason to believe, that any penalty or forfeiture has been incurred within his township, which shall be recoverable by action before a justice of the peace, according to the foregoing provisions of this chapter, forthwith to commence and prosecute a suit, in the name of the people of this state, for the recovery thereof.

Duty of supervisors.

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CHAPTER 128.Duty of other
township officers.

SEC. 13. It shall be the duty of every other township officer, who shall know or have good reason to believe that any penalty or forfeiture has been incurred within his township, forthwith to give notice thereof to the supervisor.

When supervisor
to give notice to
prosecuting at-
torney.

SEC. 14. Whenever any supervisor shall know or have good reason to believe that any penalty or forfeiture has been incurred within his township, which cannot be recovered before a justice of the peace, it shall be his duty forthwith to give notice thereof to the prosecuting attorney of his county.

Duties of prose-
cuting attorney.

SEC. 15. In the cases mentioned in the last preceding section, and in all other cases where the prosecuting attorney shall know or have good reason to believe that a penalty or forfeiture has been incurred within his county, it shall be the duty of such prosecuting attorney, without delay to prosecute for such penalty or forfeiture; and in all cases where any suit shall be instituted by the supervisor as provided in this chapter, it shall be the duty of such prosecuting attorney, if requested by such supervisor, to attend to and conduct such suit on behalf of the plaintiffs.

Moneys to be
paid over to
county treasurer.

SEC. 16. All sums of money collected on account of any penalty or forfeiture, in pursuance of the foregoing provisions of this chapter, shall be paid by the officer collecting or receiving the same, to the treasurer of the county within which such penalty or forfeiture was incurred, within twenty days after the collection or receipt thereof.

Payment over,
how compelled.

SEC. 17. If any sheriff, justice of the peace or other officer, shall neglect to pay over any moneys collected or received by him on account of any penalty or forfeiture, within the time limited in the preceding section, the county treasurer shall proceed by attachment in the circuit or county court for the county to collect the moneys so required to be paid over to him, in the same manner, and with the like effect, as in case of an attachment against a sheriff for neglecting to return an execution in a civil suit.

*Fines and forfeited Recognizances.*When order to be
entered that de-
faulting juror
show cause.

SEC. 18. When any grand or petit juror shall have been summoned to attend any court, by leaving a written notice at his residence, and such juror shall not attend pursuant to such summons, the court shall cause an order to be entered in its minutes, that such defaulting juror show cause, on some day to be specified in such order, in the same term, or on the first day of the then next term of such court, why a fine should not be imposed on him for such default.

Certified copy of
order to be de-
livered to sheriff.

SEC. 19. The clerk of the court by which such order shall be made, shall immediately deliver to the sheriff of the county, a certified copy of every such order.

Service and re-
turn of order.

SEC. 20. Such sheriff shall serve such order on the defaulting juror named therein, personally, by showing such certified copy, and delivering to him a copy thereof; and shall return such order, and his proceedings thereon to the court, at or before the time when such juror shall be required to show cause.

Proceedings on
return.

SEC. 21. If the sheriff shall return such order personally served, the court shall proceed to impose such fine as shall be proper; and if the same be returned not personally served, the court shall make a further order, that such defaulting juror show cause, at the then next term, why such fine should not be imposed; and the same proceedings shall

be had upon such order, as herein provided in respect to the first order, and such orders shall be entered from time to time, until the same be personally served, or the juror appear.

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SEC. 22. But if it appear from the return of the sheriff, or from any other evidence, that such juror is dead, or insane, or has permanently removed from the state; or if any satisfactory excuse shall be rendered by any person in behalf such juror, for his default, the court may abstain from any further proceedings in relation to such default.

When proceedings to cease.

SEC. 23. When a fine shall be imposed by any court of law upon any grand or petit juror, or upon any constable, for non-attendance, or for any other cause, or upon any officer of such court, or upon any other person, without being accompanied by an order for the immediate commitment of the person so fined, until such fine be paid, it shall be the duty of the clerk of such court immediately to deliver a copy of the order imposing such fine, to the prosecuting attorney of the county in which such court shall be held.

Order for fines to be delivered to prosecuting attorney.
1844, p. 119, § 1.

SEC. 24. The prosecuting attorney shall, immediately after the adjournment of such court, issue process under the seal of the circuit court for the county, to the sheriff thereof, commanding him to collect of the several persons named in the schedule annexed to such process, the several sums affixed to their names respectively, in such schedule, and to pay over the same to the treasurer of his county.

Process to be issued by him.
1844, p. 119, § 2.

SEC. 25. To such process shall be annexed a schedule, containing in separate columns,

Schedule to be annexed.
1844, p. 119, § 3.

1. The names of the persons fined :
2. Their respective places of residence :
3. The amount of the fine imposed on each :
4. The cause of such fine being imposed :

Which schedule shall be certified by the prosecuting attorney to contain a true abstract of the orders imposing such fines, delivered to him by the clerk.

SEC. 26. The sheriff to whom such process shall be directed and delivered, shall proceed to collect the amount of such fines respectively, of the several persons named in such schedule, by a levy and sale of the personal property of such persons, in the manner provided by law in the service of executions against property in civil cases, and shall be entitled to collect the same fees; and in case sufficient personal property cannot be found to raise such amount, such sheriff shall take the body of the person named in such schedule and detain him in custody, until he shall satisfy such sum, in the same manner as on executions against the body in civil cases, and shall be entitled for his services to the like fees.

Execution of process.
1844, p. 119, § 4.

SEC. 27. Every sheriff to whom any such process shall be delivered, shall return the same at the then next term of the circuit court for his county, after such delivery, with his proceedings thereon; and such return may be compelled by such circuit court, in the same manner as civil process.

Return of process.
1844, p. 120, § 5.

SEC. 28. If it shall appear by any such return, that any fine has not been collected, the prosecuting attorney shall issue new process, similar in all respects to the first process herein directed; and such process shall be issued from time to time, until such fines shall be collected, and the same proceedings shall be had thereon in all respects, as herein provided.

New process, when to be issued.
1844, p. 120, § 6.

SEC. 29. But whenever a prosecuting attorney shall issue any pro-

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Who to be included in process.

cess for the collection of any fine, he shall include in the schedule annexed to such process, the names of all persons upon whom any fine shall at that time have been imposed, and the process against whom has been returned unsatisfied, or against whom no process shall have been issued for the collection of such fine.

Suits on recognizances.
4 Wend., 387.

SEC. 30. Whenever any recognizance to the people of this state shall have become forfeited, the prosecuting attorney of the county in which such recognizance was taken, shall prosecute the same by action of debt, or of assumpsit; and the pleadings and proceedings therein shall be the same in all respects as in personal actions for the recovery of any debt; and upon a breach of the condition of the recognizance being found or confessed, or upon a judgment by default being entered against the defendant the judgment shall be absolute for the amount of the penalty of the recognizance.

Execution thereon.

SEC. 31. Executions shall be awarded and executed upon such judgments in the same manner as upon judgments in personal actions, and with the like effect in all respects.

Estreating recognizances.

SEC. 32. Whenever any recognizance is directed by law to be estreated, such estreat shall be made by the entry of an order, directing the same to be prosecuted, and the same shall be prosecuted as herein directed.

Moneys collected to be paid over by prosecuting attorney.

SEC. 33. The prosecuting attorney of every county, shall pay over to the county treasurer thereof, all moneys collected or received by him, on account of any recognizance, fines, penalties or forfeitures, within twenty days after receiving the same.

Account by prosecuting attorney.

SEC. 34. The prosecuting attorney of each county, shall, at the first term of the circuit court held in his county, after the first day of January in each year, render to such circuit court, on oath, an account in writing, of all moneys collected or received by him on account of any recognizances, fines, penalties or forfeitures, during the year then next preceding, and of all such matters relating to any proceedings for the recovery of any fines, penalties or forfeitures, as such court may require.

Remitting fines and recognizances.

SEC. 35. Upon the application of any person who shall have been fined by any court of law sitting in any county of this state, or of any person whose recognizance shall have become forfeited, or of his surety; the circuit court for the county in which such court was held, or in which such recognizance was taken, may, upon good cause shown, remit any such fine, or any such forfeiture of recognizance, or any part of such fine, or of the penalty of such recognizance, upon such terms as to such court shall appear just and equitable; and if any such fine shall have been paid, the officer in whose hands it may be, shall pay the same, or such part as shall have been remitted, according to such order.

Restriction of power to remit.

SEC. 36. But the last section shall not authorize such court to remit any fine imposed by any court upon a conviction for any criminal offence; nor any fine imposed by any court upon any officer thereof, or any party therein, or upon any other person for an actual contempt of such court, or for disobedience of its orders or process; nor to remit or discharge any recognizance taken in one county, for the appearance of any person in another; but the power of remitting or discharging such recognizance, shall be exercised exclusively by the circuit court for the county in which such person is bound to appear.

Notice of application.

SEC. 37. No such application shall be heard until reasonable no-

tice shall have been given to the prosecuting attorney, and until he shall have had an opportunity to examine the matter, and prepare to resist such application.

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SEC. 38. Nor shall such application in any case be granted, without payment of the costs and expenses incurred in the proceedings for the collection either of such fine, or the penalty of such recognizance.

Costs to be paid.

SEC. 39. When any person shall have been fined by any justice of the peace, upon a conviction for any offence, and shall have been committed to jail there to remain until such fine shall be paid, the circuit court for the county may remit such fine, or any part thereof, and may discharge such person from his imprisonment; and shall exercise such power in the manner and subject to the provisions herein contained, in relation to fines and penalties of recognizances.

Fines imposed by justices of the peace.

SEC. 40. All officers or other persons, who shall collect or receive any moneys, on account of any fine, penalty or forfeiture, in any case not hereinbefore provided for, shall pay over the same to the county treasurer, within twenty days after the receipt thereof, and in case of failure so to do, the county treasurer shall collect the same by attachment in the proper circuit or county court, in the manner hereinbefore provided.

All other persons receiving moneys for penalties, &c. to pay over same to treasurer.

SEC. 41. Every county treasurer shall keep an accurate account of all moneys paid to him on account of fines, penalties, forfeitures and recognizances, separate and distinct from all other accounts, and shall credit the same to the library fund, and he shall account therefor to the board of supervisors at each annual meeting of such board.

Treasurer, how to account for such moneys.

SEC. 42. All the moneys belonging to such library fund, shall be apportioned by the treasurer at the times and in the manner provided in the preceding fifty-eighth chapter, and shall be paid over to the treasurers of the several townships, according to such apportionment.

Moneys to be apportioned.

SEC. 43. Any officer who shall collect or receive any moneys, on account of any fine, penalty, forfeiture or recognizance, and shall neglect or refuse to pay over the same according to law, or shall appropriate or dispose of the same to his own use, or in any manner not authorized by law, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

Punishment for not paying over moneys.

CHAPTER 129.

OF ARBITRATIONS.

SECTION 1. All persons, except infants and married women, and persons of unsound mind, may, by an instrument in writing, submit to the decision of one or more arbitrators, any controversy existing between them, which might be the subject of an action at law, or of a suit in chancery, except as herein otherwise provided; and may, in such submission, agree that a judgment of any county court, or of any circuit court, to be designated in such instrument, shall be rendered upon the award made pursuant to such submission.

What controversies may be submitted to arbitration, and by whom.

TITLE XXIV.
CHAPTER 129.Claims to real
estate.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate, in fee or for life, in real estate; but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be so submitted to arbitration.

Submission to be
acknowledged.

SEC. 3. Every such submission shall be acknowledged by the parties signing the same, before some officer authorized to take the acknowledgment of deeds, who shall certify such acknowledgment thereon.

Time, &c., of
hearing.

SEC. 4. The arbitrators so selected, shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to any time not extending beyond the day fixed in such submission for rendering their award.

Oath of arbitra-
tors, &c.

SEC. 5. Before proceeding to hear any testimony, the arbitrators shall be sworn faithfully and fairly to hear and examine the matters in controversy submitted to them, and to make a just award thereon according to the best of their understanding, and either of such arbitrators shall have power to administer all necessary oaths to witnesses examined before them.

Witnesses.

SEC. 6. Witnesses may be compelled to appear before such arbitrators, by subpœnas, to be issued by any justice of the peace, in the same manner and with the like effect, and subject to the same penalties for disobedience, or for refusing to be sworn or to testify, as in cases of trials before justices of the peace.

All to meet; who
may award.

SEC. 7. All the arbitrators must meet together, and hear the proofs and allegations of the parties; but an award by a majority of them shall be valid, unless the concurrence of all the arbitrators be expressly required in the submission.

Confirming
award.
5 Wend., 402.
6 do. 530.

SEC. 8. Upon such submission, and the award made in pursuance thereof, being filed with the clerk of the court designated in such submission, within one year after the making of the award, such court shall, by rule in open court, confirm such award, unless the same be vacated or modified, or a decision thereon be postponed, as herein provided.

Grounds of va-
cating award.
10 Wend., 589.

SEC. 9. Any party complaining of such award, may move the court designated in such submission, to vacate the same, upon either of the following grounds:

1. That such award was procured by corruption, fraud, or other undue means:

2. That there was evident partiality or corruption in the arbitrators, or either of them:

3. That the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear any evidence, pertinent and material to the controversy, or any other misbehavior by which the rights of any party shall have been prejudiced:

4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted, was not made.

Grounds of cor-
recting award.
10 Wend., 589.

SEC. 10. Any party to such submission, may also move the court designated therein to modify or correct such award, in the following cases:

1. Where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in such award :

2. Where the arbitrators shall have awarded upon some matter not submitted to them, not affecting the merits of the decision upon the matters submitted :

3. When the award shall be imperfect in some matter of form, not affecting the merits of the controversy ; and where, if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

SEC. 11. Every such application to vacate or modify an award, shall be made to the court designated in the submission, at the next term after the publication of such award, upon due notice to the adverse party as in other cases of special motions, if there be time for that purpose ; and if there be not time, such court, or any judge thereof, may, upon good cause shown, order a stay of proceedings on such award, either absolutely, or upon such terms as shall appear just, until the term of the court next after such first term.

Motions to vacate or modify award.
1 Paige, 293.

SEC. 12. On such application, the court may vacate such award in any of the cases herein before specified, and may, in their discretion, direct a re-hearing by the same arbitrators ; and in the cases herein specified, the court may modify and correct such award, so as to effect the intent thereof, and to promote justice between the parties.

Proceedings by court.

SEC. 13. Upon such award being confirmed or modified, the court shall render judgment in favor of the party to whom any sum of money or damages shall have been awarded, that he recover the same ; and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order.

Judgment.

SEC. 14. The costs of the proceedings shall be taxed as in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make the same allowance as provided by law, in cases of references.

Costs.

SEC. 15. A record of such judgment shall be made, commencing with a memorandum reciting the submission ; then stating the hearing before the arbitrators ; their award ; the proceedings of the court thereupon, in modifying or confirming such award ; and the judgment of the court for the recovery of the debt or damages awarded, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Record of judgment.

SEC. 16. Such record shall be filed and docketed, as records of judgments in other cases ; shall have the same force and effect in all respects ; be subject to all the provisions of law in relation to judgments in actions ; and may in like manner, be removed and reversed by writ of error ; and execution shall issue thereupon against the property or person of any party against whom a recovery shall be had, in all respects as upon other judgments.

Effect of judgment ; execution

SEC. 17. When any writ of error shall be brought on any such judgment rendered in a circuit court, certified copies of the original affidavits upon which any application in relation to such award was founded, and of all other affidavits and papers relating to such application, shall be annexed to, form a part of, and be returned with the record of the judgment ; and the court to which such writ shall be returned, shall reverse, modify or amend, or affirm such judgment, or any part thereof, according to justice.

Writ of error on judgment, &c.

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CHAPTER 130.Enforcing cer-
tain judgments.

SEC. 18. When by such judgment, any party shall be required to perform any act, other than the payment of money, the court rendering such judgment, shall enforce the same by rule; and the party refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court, and may be proceeded against in the manner provided by law in such cases.

Costs on vacating
award.

SEC. 19. If upon any application made pursuant to the foregoing provisions, the court shall vacate and set aside any award of arbitrators, costs may, in the discretion of the court be awarded to the prevailing party; and the payment thereof may be enforced by rule of the court, as in other cases.

Error on order
vacating award.

SEC. 20. Upon every such order vacating an award, made by any circuit court, the party aggrieved may bring a writ of error, as upon any other judgment of such court; to which writ shall be returned certified copies of such order, and of all affidavits and papers used on such application; and the court to which such writ shall be returned, shall proceed to confirm or reverse such order, as shall be just.

Proceedings on
reversal.

SEC. 21. If such order be reversed, the proceedings shall be remitted to the court from which they were removed, to proceed thereon; or the court to which such proceedings shall have been returned, may proceed thereon to modify or confirm the award, and to render judgment thereon, in the same manner, and with the like effect, as if such court had been designated in the submission.

Construction of
this chapter.

SEC. 22. Nothing contained in this chapter shall be construed to impair, diminish, or in any manner to affect the power and authority of any court of chancery, over arbitrators, awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement to abide an award.

Neither party
can revoke sub-
mission, without
consent, &c.

SEC. 23. Neither party shall have power to revoke any submission made as provided in this chapter, without the consent of the other party; and if either party shall neglect to appear before the arbitrators after due notice, the arbitrators may nevertheless proceed to hear and determine the matters submitted to them, upon the evidence produced by the other party.

CHAPTER 130.

OF THE FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

Certain mortga-
ges may be fore-
closed by adver-
tisement.
1840, p. 145.
1844, p. 38.

SECTION 1. Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified.

Requisites to en-
title party to fore-
close.

SEC. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite,

1. That some default in a condition of such mortgage, shall have occurred, by which the power to sell became operative:

2. That no suit or proceeding shall have been instituted at law, to recover the debt then remaining secured by such mortgage, or any part thereof; or if any suit or proceeding has been instituted, that the

same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part : and,

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3. That the mortgage containing such power of sale has been duly recorded ; and if it shall have been assigned, that all the assignments thereof shall have been recorded :

4. In cases of mortgages given to secure the payment of money by instalments, each of the instalments mentioned in such mortgage after the first, shall be taken and deemed to be, a separate and independent mortgage, and such mortgage for each of such instalments may be foreclosed in the same manner, and with the like effect, as if such separate mortgages were given for each of such subsequent instalments, and a redemption of any such sale by the mortgagor shall have the like effect as if the sale for such instalments had been made upon an independent prior mortgage.

Instalments to be considered as separate mortgages, &c.
1 Doug. Mich. R. 217.

SEC. 3. Notice that such mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for twelve successive weeks, at least once in each week, in a newspaper printed in the county where the premises intended to be sold, or some part of them are situated, if there be one ; and if no newspaper be printed in such county, then such notice shall be published in a paper published at the seat of government.

Notice, how given.

SEC. 4. Every such notice shall specify,

1. The names of the mortgagor and of the mortgagee, and the assignee of the mortgage, if any :

What to specify

2. The date of the mortgage and when recorded :

3. The amount claimed to be due thereon at the date of the notice : and,

4. A description of the mortgaged premises, conforming substantially with that contained in the mortgage.

SEC. 5. The sale shall be at public vendue, between the hour of nine o'clock in the forenoon, and the setting of the sun, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, under-sheriff, or a deputy sheriff of the county, to the highest bidder.

Sale, how and where made.

SEC. 6. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale shall be postponed, at the expense of the party requesting such postponement.

How postponed.

SEC. 7. If the mortgaged premises consist of distinct farms, tracts, or lots, they shall be sold separately, and no more farms, tracts or lots shall be sold, than shall be necessary to satisfy the amount due on such mortgage, at the date of the notice of sale, with interest, and the costs and expenses allowed by law.

Distinct tracts, &c., to be sold separately.

SEC. 8. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Mortgagee, &c. may purchase. 1841, p. 173. 4 Cowen, 266. 1 Paige, 52.

SEC. 9. The officer or person making the sale, shall forthwith execute and deliver to the purchaser a deed of each part of the premises separately sold, specifying therein as the consideration of such

Deed to purchaser, indorsement thereon.

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CHAPTER 130.**

deed, the precise amount for which such parcel was sold, and shall endorse thereon the time when such deed will become operative, in case the premises are not redeemed according to law, and shall deposit the same with the register of deeds of the county in which the land is situated.

Effect of deed,
if premises not
redeemed.

SEC. 10. Unless the premises described in such deed shall be redeemed within the time limited for such redemption, as hereinafter provided, such deed shall thereupon become operative, and may be recorded, and shall vest in the grantee therein named, his heirs or assigns, all the right, title and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter; but no person having any valid subsisting lien upon the mortgaged premises or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby.

How lands re-
deemed.

SEC. 11. If the mortgagor, his heirs, executors, administrators, or any person lawfully claiming from or under him or them, shall, within one year from the time of such sale, redeem the premises sold, or any distinct lot or parcel thereof separately sold, by paying to the purchaser, his executors, administrators or assigns, or to the register of deeds in whose office such deed is deposited, for the benefit of such purchaser, the sum which was bid therefor, with interest from the time of the sale, at the rate of ten per cent. per annum; then such deed shall be void and of no effect.

Proceedings up-
on redemption.

SEC. 12. Upon the payment of the sum bid for any parcel at such sale, and interest thereon as aforesaid, to the register in whose office the deed therefor shall have been deposited; or upon delivering to such register a certificate signed and acknowledged by the person entitled to receive the same, and certified by some officer authorized to take the acknowledgment of deeds, setting forth that such sum, with interest, has been paid to such person, such register shall thereupon destroy such deed, and shall enter in the margin of the record of such mortgage, if the same shall have been recorded in his office, a memorandum that such mortgage is satisfied, in whole or in part, as the case may be.

Damages for re-
fusing to execute
certificate of pay-
ment.

SEC. 13. If any person entitled to receive such redemption moneys, shall, upon payment or tender thereof to him, refuse to make and acknowledge such certificate of payment, he shall be liable to the person aggrieved thereby, in the sum of one hundred dollars damages, over and above all the actual damages sustained, to be recovered in an action on the case.

Payment of sur-
plus to mortga-
gor, &c.

SEC. 14. If, after any sale of real estate made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on which such real estate was sold; and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person, on demand, to the mortgagor, his legal representatives or assigns.

How evidence of
sale perpetuated.

SEC. 15. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure,

1. An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the printer of the newspaper in which the same was inserted, or by some person in his employ knowing the facts: and,

2. An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser. TITLE XXIV.
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SEC. 16. The affidavits specified in the last preceding section, may be taken and certified by any officer authorized by law to administer oaths. Before whom affidavits may be taken.

SEC. 17. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages; and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained. Affidavits to be recorded.

SEC. 18. A note referring to the page and book where the evidence of any sale having been made under a mortgage, is recorded, shall be made by the register recording such evidence, in the margin of the record of such mortgage, if such record be in his office. Reference in margin of record of mortgage.

CHAPTER 131.

OF THE DRAINING OF SWAMPS AND OTHER LOW LANDS.

SECTION 1. Any person owning or possessing any swamp, marsh or other low land, who shall desire to drain such land, and who shall deem it necessary, in order thereto, that a ditch or ditches should be opened through lands belonging to other persons, in case the owners of any such lands shall refuse to permit the opening of such ditch or ditches through the same, *he* may make application in writing to the township board of the township where such marsh, swamp or other low lands shall be situated, to inquire and determine whether such marsh, swamp or other lands are a source of disease to the inhabitants, and whether the public health will be promoted by draining the same. Owner of swamp &c., may apply to township board.
1839, p. 153.

SEC. 2. Upon such application being made to the township board, they or a majority of them shall inquire and determine and certify under their hands, whether the marsh, swamp or other low lands are a source of disease, and whether the public health will be promoted by draining the same, and if they shall certify that the same are a source of disease, and that the public health will be promoted by draining the same, the person or persons making such application may file such certificate with any justice of the peace of the township in which the lands are situated, through which any such ditch is proposed to be opened, and apply for such summons as is hereinafter specified. Determination, certificate of board, and application for summons.

SEC. 3. The justice to whom such application shall be made, shall thereupon issue a summons, directed to the sheriff or any constable of the same county, requiring him to summon nine reputable freeholders of such county, who are not interested in the said lands, nor in any of them, nor in any wise of kin to either of the parties, to be and appear on the premises, at a certain time to be specified in such sum- Summons to be issued by justice.

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mons, not less than ten, nor more than twenty days from the date thereof.

Summons to direct notice to be given to owner.

SEC. 4. Such summons shall also direct the sheriff or constable to give at least six days' notice to the owner of such lands, of the time at which such jury is to appear.

Summons, how executed.

SEC. 5. The officer to whom such summons shall be delivered, shall execute the same by summoning such jurors, in the same manner, and with the like authority, as upon venire issued in cases pending before justices of the peace, and shall, in like manner make return thereof, and of the fact of his having given the notice therein required.

Justice to attend jury, and administer oath, &c.

SEC. 6. The justice shall attend at the time and place specified in the summons, and if it appear that due notice has been given, as required in the summons, and if six or more of the nine freeholders as above specified, shall then and there appear, he shall administer to each of them an oath or affirmation, well and truly to examine and certify, in regard to the benefits or damages which will result from the opening of such ditch or ditches.

Proceedings by jury.

SEC. 7. The person applying to have such ditch or ditches opened, shall then deliver to the jury a map of the land through which the same are proposed to be opened, on which map the plan, length, width and depth of such ditch or ditches shall be particularly designated; and thereupon the jury shall personally examine the premises, and hear any reasons that may be offered in regard to the question submitted to them; and they may, if they think proper, vary the dimensions of any ditch so proposed to be opened; but in each (*such*) case they shall designate on the said map the alterations made by them.

Inquisition of jury to be certified.

SEC. 8. If, after taking all the circumstances into consideration, the jury shall be satisfied that the opening of such ditch or ditches is necessary and proper, they shall so certify by inquisition in writing; and if so satisfied, they shall further certify by such inquisition, that the benefits which will accrue to the owner of the lands, from the opening of such ditch or ditches, will or will not be equal to any damages that he will sustain thereby; and if such benefits shall be certified not to be equal to the damages, the jury shall assess the damages which, in their judgment, will be sustained by such owner, and certify the same in like manner.

Inquisition to be delivered to justice; fees of officers and jury.

SEC. 9. Every such inquisition shall be signed by all the jurors, and delivered to the justice; and the justice, jurors, and officer serving the summons, shall be entitled to receive the same fees for their services under the provisions of this chapter as are allowed by law for similar services in causes tried before justices of the peace.

When applicant may enter and open ditch.

SEC. 10. Upon payment or tender of the damages assessed by the jury, and the costs of such assessment, or if no damages shall have been found by them, upon payment of the costs of the proceedings, and the delivery of the certificate of the jury to the justice, it shall be lawful for the person applying for such summons, to enter, with his servants, teams, carriages, and necessary implements, upon such lands, and then and there to cut and open such ditch or ditches as were designated on the said map, according to the plan and dimensions therein specified and adopted by the jury, not deviating materially from such dimensions.

Ditch may be cleared and scoured from time to time.

SEC. 11. After such ditch or ditches shall have been opened, it shall be lawful for the said applicant, his heirs or assigns forever thereafter,

from time to time, as it shall be necessary, to enter upon the lands through which such ditch or ditches shall have been opened, for the purpose of clearing out and scouring the same, and then and there to clear and scour such ditch or ditches, in such manner as to preserve the original length, depth, and width thereof.

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SEC. 12. Any person who shall dam up, obstruct or in any way injure any ditch or ditches so opened, shall be liable to pay to the person owning or possessing the swamp, marsh or other low land, for the draining of which such ditch or ditches shall have been opened, double the damages that shall be assessed by the jury for such injury, and in case of a second or other subsequent offence by the same person, treble such damages.

Double damages
for obstructing or
injuring ditch, &c.

SEC. 13. The justice before whom proceedings shall be had under this chapter, shall cause the map delivered by the applicant, and the inquisition of the jury, which he shall certify to have been taken before him, to be filed in the office of the clerk of the township wherein the premises shall be situated, to be kept in his office, as a record of the proceedings between the parties.

Justice to cause
maps to be filed
with township
clerk.

CHAPTER 132.

OF THE SUPPORT AND REGULATION OF MILLS.

SECTION 1. When any mill which is owned by several persons as joint tenants or tenants in common, or the dam or appurtenances of such mill shall need to be repaired or to be re-built, in whole or in part, and the proprietors shall not all agree to join in repairing or re-building the same, the greater part in interest of the proprietors may cause the work to be done at the expense of the whole, in proportion to their respective interests.

When mill may
be repaired, &c.
by part of own-
ers at expense of
all.
4 Mass., 559.
11 do 325.

SEC. 2. Any one or more of the proprietors may, in such case, call a meeting of the whole of them, to be held at the mill, to consult and agree upon the measures to be taken for repairing or re-building the same, which meeting shall be called by a written notice, signed by the person who called it, and addressed to each of the other proprietors, expressing that the mill in question needs to be repaired or re-built, and that a meeting of the proprietors thereof will be held at the mill, or at some place in the county where the mill is situated, on a certain day and hour mentioned in the notice, to consult and agree upon the measures to be taken for that purpose, and requesting the attendance of the proprietors at such meeting.

Meeting of pro-
prietors, how
called.

SEC. 3. The notice may be served by any constable or other disinterested person, and the certificate of such constable, endorsed on a copy of the notice, or the affidavit of such other person, annexed thereto, specifying the several persons, if more than one, on whom he served it, and the time and manner of the service, on each, shall be deemed sufficient evidence thereof.

Notice, by whom
served, and how
returned.

SEC. 4. The notice shall be served by delivering the original to the person to whom it is addressed, or by leaving such notice at his dwelling house, or at his last and usual place of abode, not more than

How notice to be
served.

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Majority in interest may take measures to repair, &c.

Each proprietor to pay his proportionate share of expenses.

Proprietors advancing money to have lien on rents and profits, or may maintain suit.

Guardians to act for minors, &c.

When husband to act for his wife.

Apportionment of expense, in case of tenant for life, &c.

Mortgagee in possession, and mortgagor, how far liable.

How moneys advanced may be collected.

thirty days nor less than seven days before the day appointed for the meeting.

SEC. 5. At the meeting so called, or at any adjournment thereof, the greater part in interest of the whole body of the proprietors of the mill, may take measures to cause the mill, or the dam or appurtenances thereof, to be repaired or re-built, as they shall judge most for the interest of all who are concerned therein.

SEC. 6. Every proprietor of the mill shall pay his just and equal part of the charge and expense of such repair or re-building, in proportion to his share or interest in the mill, which sum shall be paid on demand, after the work is completed, to the proprietors by whom it shall have been advanced, with interest from the time of the advance.

SEC. 7. The proprietors who shall advance the money so expended, shall have a lien therefor on the rents and profits of the mill, and may retain so much thereof as belongs to any proprietor who is indebted to them for such advance, to be applied to the payment of his debt, or they may maintain a suit for such debt, or for as much thereof as shall not be paid out of the rents and profits.

SEC. 8. When any proprietor is under guardianship, as a minor or otherwise, his guardian may act for him in calling a meeting of the proprietors, or in attending such a meeting, and may vote for the ward, and may do all such other acts in the premises as the ward could do if competent to act for himself; all which shall be binding on the ward, and on his estate.

SEC. 9. When any part of the mill is held by a married woman, her husband may in like manner represent her, and appear and act for her at such meeting, and his doings shall have the same effect as if they had been done by her before their intermarriage.

SEC. 10. When any part of the mill is held by any person as tenant for life, or years, with remainder or reversion to another person, the sum due for repairs and other expenses on that part of the mill, shall be apportioned on the tenant for life or years, and on the remainderman, or reversioner, in proportion to their respective interests in the premises, or as shall be equitable and just; and the party to whom the money shall be due from such remainderman or reversioner, shall have a lien on the rents and profits belonging to him after his estate shall come into possession, if not sooner paid, notwithstanding any limitation by lapse of time.

SEC. 11. Every mortgagee in possession shall be considered as a proprietor for all the purposes of this chapter, but the mortgagor shall also be liable for all sums so due on account of his share of the mill, so far as the same are not recovered of the mortgagee, provided the action therefor is brought against the mortgagor, before his right of redemption is foreclosed; and all sums paid by the mortgagee on such account, shall be considered and allowed between him and the mortgagor, as so much added to the mortgage.

SEC. 12. All sums due from one proprietor to another, for moneys advanced under the provisions of this chapter, may be recovered in an action of assumpsit; and when two or more proprietors are so indebted, the creditor or creditors may maintain a bill in chancery against any two or more of them, in which suit the court shall determine what amount is due from each of the debtors severally, and shall award execution against each of them accordingly, and shall ap-

portion the amount so recovered, among the complainants in such suit if more than one, according to their respective rights.

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SEC. 13. Nothing in this chapter shall make void, or in any way affect, any contract or agreement between the proprietors of any mill, as to the repair or rebuilding thereof.

Contracts between proprietors not affected by this chapter.

SEC. 14. Every miller, occupying and using a grist mill, shall be provided with scales and weights, or a vibrating steel-yard, to weigh corn, grain, flour and meal, delivered at and taken from the mill, if required; and if he shall neglect to keep himself so provided, or shall refuse so to weigh corn, grain, flour or meal, when required by any person delivering or taking away the same, he shall forfeit for each neglect or refusal, not less than one dollar, nor more than five dollars.

Miller to keep scales, &c., and weigh grain, flour, &c. Forfeiture for neglect or refusal.

Rates of Toll for Grinding.

SEC. 15. The toll for grinding and bolting any wheat, rye, or other grain, shall not exceed one-tenth part thereof; for grinding, and not bolting, any wheat, rye, or other grain, except Indian corn, the toll shall not exceed one-twelfth part thereof; and for grinding, and not bolting, Indian corn, the toll shall not exceed one-tenth part thereof.

Rates of toll.

SEC. 16. The owner or occupier of any grist mill, shall well and sufficiently grind the grain brought to his mill for that purpose in due time, and in the order in which it shall be received, and shall be accountable for the safe keeping of all grain received in such mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought, when demanded, but every owner or occupant of a mill may grind his own grain at any time.

Duty of owner or occupant of mill.

SEC. 17. Nothing contained in the last section shall be so construed as to charge the owner or occupant of any mill, for the loss of any grain, bag or cask, which shall happen by fire or inevitable accident, without the fault of such owner or occupant, his agents or servants.

Construction of last section.

SEC. 18. Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due time as the same shall be brought, or who shall exact or take more toll than is herein allowed, shall, in every such case be liable to the party injured in the sum of five dollars damages, over and above the actual damages sustained thereby.

Liability of miller in certain cases.

CHAPTER 133.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY PUBLIC OFFICERS TO THEIR SUCCESSORS.

SECTION 1. Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office, and every person violating this provision shall be deemed guilty of a misdemeanor.

Books and papers to be delivered to successor. Penalty.

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Complaint by
successors.

SEC. 2. If any person shall refuse or neglect to deliver over to his successor, any books or papers, as required in the preceding section, such successor may make complaint thereof to any judge of a court of record, or to any circuit court commissioner for the county where the person so refusing shall reside.

Delivery, how
enforced.

SEC. 3. If such officer be satisfied by the oath of the complainant, and such other testimony as may be offered, that any such books or papers are withheld, he shall grant an order, directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

Officer to inquire
into complaint.

SEC. 4. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such officer shall proceed to inquire into the matters set forth in the complaint.

Affidavit of de-
livery of books
and papers.

SEC. 5. If the person charged with withholding such books and papers, shall make affidavit before such officer, that he has truly delivered over to his successor, all such books and papers in his custody, or appertaining to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained against shall be discharged.

When person
charged may be
committed.

SEC. 6. If the person complained against shall not make such affidavit, and it shall appear that any such books or papers are withheld, the officer before whom such proceedings shall be had, shall, by warrant, commit the person so withholding, to the jail of the county, there to remain until he shall deliver such books and papers or be otherwise discharged according to law.

Search warrant
when to be is-
sued.

SEC. 7. In the case stated in the last section, if required by the complainant, such officer shall also issue his warrant directed to the sheriff or any constable of the county, commanding them in the day time, to search such places as shall be designated in such warrant, for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such office, and seize and bring them before the officer issuing such warrant.

Proceedings
thereupon.

SEC. 8. Upon any books or papers being brought before such officer, by virtue of such warrant, he shall inquire and examine whether the same appertain to the office, from which the officer so refusing to deliver, was removed, or of which the term expired, and if the same pertain to such office he shall cause them to be delivered to the complainant.

Books and pa-
pers, how obtain-
ed when officer
dies, &c.

SEC. 9. If any person appointed or elected to any office, shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office, shall come to the hands of any person, the successor in any such office may, in like manner as herein before prescribed, demand such books or papers from the person having the same in his possession; and if withheld, an order may be obtained, and the person charged may in like manner make affidavit of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such affidavit, and to deliver up the books and papers so demanded, such person may be committed to jail, and a search warrant may be issued, and the property seized may be delivered to the complainant, as herein before prescribed.

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TITLE XXV.
CHAPTER 134.OF WRITS OF HABEAS CORPUS, SCIRE FACIAS, INFORMATIONS,
WRITS OF MANDAMUS, PROHIBITION, ERROR AND CERTIORARI.

Chapter 134. Of the Writs of Habeas Corpus and Certiorari.

Chapter 135. Of Writs of Scire Facias.

Chapter 136. Of Informations in the nature of a Quo Warranto, and
in certain other cases.

Chapter 137. Of Writs of Mandamus and Prohibition.

Chapter 138. Of Writs of Error and Certiorari.

CHAPTER 134.

OF THE WRITS OF HABEAS CORPUS AND CERTIORARI.

Habeas Corpus to bring up a Person to Testify.

SECTION 1. Every court of record shall have power, upon the application of any party in any suit or proceedings, civil or criminal, pending in such court, to issue a writ of habeas corpus for the purpose of bringing before such court any prisoner who may be detained in any jail or prison within this state, for any cause except a sentence for a felony, to be examined as a witness in such suit or proceeding, in behalf of the party making such application.

Habeas corpus to
testify.

SEC. 2. Every such application shall be verified by affidavit, and shall state,

Application, how
made.

1. The title and nature of the suit or proceeding, in regard to which the testimony of such prisoner is desired: and,

2. That the testimony of such prisoner is material and necessary to such party on the trial or hearing of such suit or proceeding, as he is advised by counsel, and verily believes:

But if the the application be made by the attorney general or prosecuting attorney, it shall not be necessary to swear to such advice of counsel.

SEC. 3. Such writ may also be issued by any justice of the supreme court, or any officer authorized to perform the duties of such justice, upon the like application of a party to any suit or proceeding pending in a court of record, or pending before any officer or body who may be authorized to examine witnesses in any suit or proceeding.

Officers who
may allow writ.

SEC. 4. Such writ may also be issued by any of the officers aforesaid, upon the application of a party to a suit before any justice of the peace, to bring any prisoner confined in the jail of the same

When to be
issued in
suits before justi-
ces.
7 Wend., 132.

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Certain prisoners
to be remanded.
2 Paige, 104.

county, or the county next adjoining that where such justice may reside, before such justice, to be examined as a witness.

SEC. 5. Whenever any person shall be in execution on any civil process, or committed on any criminal charge, and a writ of habeas corpus shall be issued to bring the body of such prisoner before any court, officer or body to testify, or to answer for any contempt or any other matter, and it be returned upon the writ that the prisoner is charged in execution, or committed as aforesaid, he shall be remanded after having testified; and if any order of commitment be made against such prisoner, he shall be so committed to the prison from which he was taken.

Liability for dis-
obeying habeas
corpus.

SEC. 6. Whenever any writ of habeas corpus shall be issued pursuant to any of the foregoing provisions of this chapter, it shall be the duty of the officer to whom the same shall be delivered to obey and return such writ according to the command thereof, in the manner and within the time prescribed by law; and every officer who shall neglect or refuse so to do, shall be liable to the people of this state, when the writ was issued upon the application of the attorney general, or a prosecuting attorney, and in other cases to the party upon whose application the same shall have issued, in the sum of five hundred dollars.

Habeas Corpus and Certiorari to inquire into cause of Detention.

Who may sue
writ.

SEC. 7. Every person committed, detained, confined or restrained of his liberty within this state, for any criminal, or supposed criminal matter, or under any pretence whatsoever, except in the cases in the next section specified, may prosecute a writ of habeas corpus or of certiorari according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint.

Who not entitled
to sue writ.

SEC. 8. The following persons shall not be entitled to prosecute such writ:

1. Persons committed or detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or shall have acquired exclusive jurisdiction by the commencement of suits in such courts:

2. Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment:

3. Persons convicted, or in execution, upon legal process, civil or criminal:

4. Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

Application for
writ.

SEC. 9. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, as follows:

1. To the supreme court, during its sitting: or,

2. During any term or vacation of the supreme court, to any one of the justices of the supreme court, or any officer who may be authorized to perform the duties of a justice of the supreme court at chambers, circuit court commissioner, or a judge of a circuit court, being or residing within the county where the prisoner is detained; or if there be no such officer within such county, or if he be absent, or for

any cause be incapable of acting, or having refused to grant such writ, then to some officer having such authority residing in any adjoining county.

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SEC. 10. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no such officer in such county authorized to grant such writ, or if one reside there, that he is absent, or has refused to grant such writ, or for some cause to be specially set forth, is incapable of acting; and if such proof be not produced the application shall be denied.

Proof required
on application in
another county.

SEC. 11. The petition must state in substance,

Contents of petition
and how
verified.

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty; the officer or person by whom he is so confined or restrained, and the place where; naming both parties if their names be known, or describing them if their names be not known:

2. That such person is not committed or detained by virtue of any process, judgment, decree or execution specified in the preceding eighth section:

3. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party:

4. If the confinement be by virtue of any warrant, order or process, a copy thereof must be annexed; or it must be averred, that for some sufficient reason, a demand of such copy could not be made; or that such demand was made, and that such copy was refused:

5. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists:

6. It must specify whether the party applies for the writ of habeas corpus, or for the writ of certiorari: and,

7. It must be verified by the oath of the party making the application.

SEC. 12. Any court or officer empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor, is, by the provisions of this chapter, prohibited from prosecuting such writ.

When writ to be
granted.

SEC. 13. Every writ of habeas corpus, issued under the provisions of this chapter, for the purpose of inquiring into the cause of any imprisonment or restraint, shall be substantially in the following form:

Form of habeas
corpus.

"In the name of the people of the State of Michigan: To the sheriff of the county of _____, (or 'to A. B.')

We command you, that you have the body of C. D. by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before our justices of our supreme court, (or 'before E. F., one of the justices of our supreme court,' or as the case may be,) at, &c., on &c., (or 'immediately after the receipt of this writ') to do and receive what shall then and there be considered concerning the said C. D.

And have you then there this writ.

Witness, &c."

SEC. 14. Every writ of certiorari, issued pursuant to this chapter, shall be substantially in the following form:

Form of certiorari.

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"In the name of the people of the state of Michigan :
To the sheriff of &c., (or 'to A. B.')

We command you that you certify fully and at large to our justices of our supreme court, (or 'to E. F., one of the justices of our supreme court,' or as the case may be,) at &c., on &c., (or 'immediately after the receipt of this writ,') the day and cause of the imprisonment of C. D. by you detained, as is said, by whatsoever name the said C. D. shall be called or charged. And have you then there this writ.

Witness, &c."

When writs sufficient.

SEC. 15. Such writs of habeas corpus or certiorari shall not be disobeyed for any defect of form ; but they shall be sufficient,

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name ; or if both such names be unknown or uncertain, he may be described by an assumed appellation ; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person :

2. If the person imprisoned or restrained, or who is directed to be produced, be designated by name ; or if his name be uncertain or unknown, if he be described in any other way, so as to designate the person intended.

Duty of judges to issue writs in certain cases.

SEC. 16. When the supreme court, or any justice thereof, or judge of a circuit court shall have evidence from any judicial proceeding had before them, that any person within the county where such court or officer shall be, is illegally confined and restrained of his liberty, it shall be the duty of such court or officer to issue a writ of habeas corpus or certiorari for his relief, although no petition be presented, or application made for such writ.

Liability for refusing writ.

SEC. 17. If any court or officer authorized by the provisions of this chapter to grant writs of habeas corpus or certiorari, to inquire into the cause of any imprisonment or detention, shall refuse to grant such writ when legally applied for, every member of such court who shall have assented to such refusal, and every such officer, shall severally be liable to the party aggrieved, in one thousand dollars damages.

Return to writ.

SEC. 18. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally,

1. Whether he have, or have not, the party in his custody, or under his power or restraint :

2. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large :

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return ; and the original shall be produced and exhibited on the return of the writ to the court or officer before whom the same is returnable :

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place.

Return to be signed, and when to be sworn to.

SEC. 19. The return must be signed by the person making the same ; and except when such person shall be a sworn public officer,

and shall make his return in his official capacity, it shall be verified by his oath. TITLE XXV.
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SEC. 20. If a writ of habeas corpus be issued, the person or officer on whom it shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in case of the sickness of such person as hereinafter provided. Body of prisoner,
when to be
brought up.

SEC. 21. If the person upon whom such writ of habeas corpus or certiorari shall have been duly served, shall refuse or neglect to obey the same by producing the party named in any such writ of habeas corpus, and making a full and explicit return to every such writ of habeas corpus or certiorari within the time required by this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the court or officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person. Proceedings on
disobedience of
writ.

SEC. 22. Such attachment shall be directed to the sheriff of any county within this state, and shall command him forthwith to apprehend such person, and bring him before such court or officer, and on being so brought, such person shall be committed to close custody in the jail of the county in which such court or officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order which may be made by such court or officer, in relation to the person for whose relief such writ shall have been issued. ib.

SEC. 23. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person, to be designated therein, who shall have full power to execute the same; and such sheriff, upon being brought up, may be committed to the jail of any county other than his own. Proceedings
against sheriff.

SEC. 24. The court or officer by whom any such attachment may be issued, may also, at the same time, or afterwards, issue a precept to the same sheriff, or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such court or officer, the party for whose benefit such writ of habeas corpus or certiorari shall have been allowed; who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed, or remanded, as such court or officer shall direct. Prisoner to be
produced.

SEC. 25. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county as in other cases. Power of the
county.

SEC. 26. The court or officer before whom the party shall be brought on such writ of habeas corpus, shall, immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been for any criminal, or supposed criminal matter, or not. Proceedings on
return of writ.

SEC. 27. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such court or officer shall discharge such party from the custody or restraint under which he is held. When prisoner
to be discharged.

SEC. 28. It shall be the duty of such court or officer forthwith to remand such party, if it shall appear that he is detained in custody, either, When prisoner
to be remanded.

1. By virtue of process issued by any court or judge of the Uni-

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ted States, in a case where such court or judge has exclusive jurisdiction : or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree : or,

3. For any contempt specially and plainly charged in the commitment, by some court, officer or body having authority to commit for the contempt so charged : and,

4. That the time during which such party may be legally detained has not expired.

When prisoner
to be discharged
in civil cases.

SEC. 29. If it appear on the return, that the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such prisoner can only be discharged in one of the following cases :

1. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person :

2. Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged :

3. Where the process is defective, in some matter of substance required by law, rendering such process void :

4. Where the process, though in proper form, has been issued in a case not allowed by law :

5. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him : or,

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

Restriction of
powers of court
or officer.

SEC. 30. But no court or officer, on the return of any habeas corpus or certiorari issued under this chapter, shall have power to inquire into the legality or justice of any process, judgment, decree or execution, specified in the preceding eighth section of this chapter ; nor into the justice or propriety of any commitment for a contempt made by any court, officer or body, according to law, and charged in such commitment as hereinbefore provided.

Irregular criminal
commitments.

SEC. 31. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of any such offence, although the commitment be irregular, the court or officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered ; or if not, shall forthwith remand such party.

Remanding prisoner,
&c.

SEC. 32. If the party be not entitled to his discharge, and be not bailed, the court or officer shall remand him to the custody, or place him under the restraint, from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto ; if not so entitled, he shall be committed by such court or officer, to the custody of such officer or person as by law is entitled thereto.

Custody of prisoner.

SEC. 33. Until judgment be given upon the return, the court or officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such court or officer shall be, or place him in such care, or under such custody, as his age and other circumstances may require.

SEC. 34. When it shall appear from the return of such writ, that

the party named therein is in custody on any process, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, shall have had at least four days notice of the time and place at which such writ shall have been made returnable.

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Notice to parties.
12 Wend., 231.

SEC. 35. When it shall appear from the return, that such party is detained upon a criminal accusation, such court or officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county within which such court or officer shall be, or to the attorney general, if there be no such prosecuting attorney within such county.

Notice to prosecuting attorney.

SEC. 36. The party brought before any such court or officer, on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact, to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge; which allegations or denials shall be on oath; and thereupon such court or officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Evidence against return, &c.

SEC. 37. Whenever, from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the court or officer before whom the writ is made returnable, the party in whose custody he is, may state that fact in his return, verifying the same by his oath; and if such court or officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, they shall proceed to decide upon such return, and to dispose of the matter in the same manner as if a writ of certiorari had been issued, instead of a writ of habeas corpus.

Sickness, &c. of prisoner.

SEC. 38. Whenever an application shall be made for a writ of habeas corpus, according to the provisions of this chapter, to any court or officer, if it appear to such court or officer upon the facts set forth in the petition, that the cause, matter, or offence, for which the person is confined or detained, is not bailable, according to the provisions of law, instead of awarding such writ of habeas corpus, a writ of certiorari may be granted, directed to the officer or person in whose custody, or under whose control, such prisoner shall be alleged to be, in like manner as if such writ of certiorari had been applied for by the prisoner.

When writ of certiorari may be issued.

SEC. 39. Upon the return of such certiorari being made, the court or officer before whom such writ shall be returnable, shall proceed in the same manner as upon returns to writs of habeas corpus, and shall hear the proofs of the parties in support of and against such return.

Proceedings on return of certiorari.

SEC. 40. If it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the court or officer shall make an order that those having such person in their custody, discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such court or officer shall cease from all further proceedings thereon.

When order to be made for discharge of prisoner.

SEC. 41. Notwithstanding any writ of certiorari may have been issued or returned, according to the foregoing provisions, the court or officer before whom the same was returnable, may issue a writ of ha-

Habeas corpus may issue after return of certiorari.

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beas corpus, which shall, in all respects, be subject to the provisions hereinbefore contained; and if such court or officer refuse a writ of certiorari, or upon the return thereof, refuse to discharge the person detained, if such person claim the writ of habeas corpus, he shall be entitled to the same as hereinbefore provided.

Order to bail
prisoner on cer-
tiorari.

SEC. 42. If upon the return of any writ of certiorari, it shall appear that the person detained is entitled to bail, the court or officer before whom the same was returnable, shall make an order directing the sum in which such person shall be held to bail, and the court at which he shall be required to appear; and that on such bail being entered into, in conformity to such order, and the provisions of law, such prisoner be discharged.

Bail, by whom
and how to be
taken.

SEC. 43. Upon the production of such order to any circuit court commissioner of any county in which such prisoner may be, he shall be authorized to take the recognizance of the person so detained, and of two sufficient sureties, in the sum so directed, with a condition for the appearance of such person at the court designated in such order; but previous to taking such recognizance, such officer shall be satisfied by the oath of the persons offering themselves as sureties, that they are householders of the county, and are severally worth double the sum in which they shall be required to be bound, over and above all demands against them.

When to be dis-
charged.

SEC. 44. Such judge or commissioner shall file the recognizance taken by him, with the clerk of the court before which the prisoner shall be bound to appear, and shall certify on such order the compliance therewith; and the production of such order, so certified, shall entitle such prisoner to be discharged from imprisonment, for the cause which shall have been returned to such certiorari.

Obedience to or-
der for discharge
how enforced.

SEC. 45. Obedience to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the court or officer granting such order, by attachment, in the same manner as is herein provided for neglect to make return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience, shall be liable to the party aggrieved in the sum of one thousand dollars damages, in addition to any special damages such party may have sustained.

Officers protected
in obeying order.

SEC. 46. No sheriff or other officer shall be liable to any civil action for obeying any such order of discharge; and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such order, he may give evidence thereof under his plea of the general issue in bar of the action.

In what cases
prisoner may be
recommitted for
same cause.

SEC. 47. No person who has been discharged by the order of any court or officer, upon a habeas corpus or certiorari, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause: but it shall not be deemed the same cause:

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence: or,

2. If, after a discharge for defect of proof, or for any material defect in the commitment, in a criminal case, the prisoner be again ar-

rested on sufficient proof, and committed by legal process on (for) the same offence :

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3. If in a civil suit the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action : or,

4. If in any civil suit in which process may lawfully issue against the body, he shall have been discharged from commitment on original process, and shall be afterwards committed on execution in the same cause, or on original process in any other suit, after such first suit shall have been discontinued.

Sec. 48. If any person, either solely or as a member of any court, or in the execution of any order, judgment or process, shall knowingly re-commit, imprison or restrain of his liberty, or cause to be re-committed, imprisoned or restrained of his liberty, for the same cause, except as provided in the last preceding section, any person so discharged, or shall knowingly aid or assist therein, he shall be liable to the party aggrieved in the sum of one thousand dollars damages, and shall also be deemed guilty of a misdemeanor.

Liability for re-committing in prohibited cases.

Sec. 49. Any one having in his custody or under his power, any person, who, by the provisions of this chapter, would be entitled to a writ of habeas corpus or certiorari, to inquire into the cause of his detention, or for whose relief any such writ shall have been duly issued, who shall, with intent to elude the service of any such writ, or to avoid the effect thereof, transfer any such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Concealment &c. of prisoner a misdemeanor.

Sec. 50. Every person who shall knowingly aid or assist in the violation of the last preceding section, shall be deemed guilty of a misdemeanor.

Aiding in concealment, &c.

Sec. 51. Every person convicted of any offence under either of the three last preceding sections, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; in the discretion of the court.

Punishment.

Sec. 52. Whenever it shall appear by satisfactory proof, that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury, before he can be relieved by the issuing of a habeas corpus or certiorari, any court or officer authorized to issue such writs, may issue a warrant, reciting the facts, and directed to any sheriff, constable or other person, and commanding such officer or person to take such prisoner, and forthwith to bring him before such court or officer, to be dealt with according to law.

When warrant may issue for prisoner.

Sec. 53. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person, for such offence.

When warrant to order arrest of offender.

Sec. 54. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the court or officer issuing the same; and thereupon the person detaining such prisoner shall make a return, in like manner,

Execution of warrant; proceedings.

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of person brought
up on warrant.Liability of offi-
cer, &c., refusing
copy of process.

and the like proceedings shall be had, as if a writ of habeas corpus had been issued in the first instance.

SEC. 55. If the person having such prisoner in his custody shall be brought before such court or officer, as for a criminal offence, he shall be examined, committed, bailed or discharged, by such court or officer, in the like manner as in other criminal cases of the like nature.

SEC. 56. Any officer or other person who shall refuse or neglect for six hours, to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person, to any one who shall demand such copy and tender the lawful fees therefor, shall be liable to the person so detained in the sum of two hundred dollars damages.

General Provisions.

Seal to writs.

SEC. 57. All writs of habeas corpus or certiorari, issued by any court pursuant to the provisions of this chapter, shall be under the seal of the court by which they are awarded; and if awarded by any officer out of court, they shall be under the seal of the court before which they are made returnable; or if any such writ be made returnable before some body, other than a court of record, or before an officer out of court, it shall be under the seal of the supreme court, or of the circuit court for the county in which it shall be issued.

Return day.

SEC. 58. Every such writ may be made returnable at a day certain, or forthwith, as the case may require.

Allowance of
writs.

SEC. 59. Every such writ shall be endorsed with a certificate of the allowance thereof, and with the date of such allowance; which endorsement, if the writ be awarded by a court, shall be signed by the chief justice or other presiding officer of such court; if it be awarded by any officer out of court, the endorsement shall be signed by such officer.

Habeas corpus
in behalf of the
people.
9 Wend., 505.

SEC. 60. Whenever a writ of habeas corpus shall be required in any action or matter civil or criminal, to which the people of this state shall be parties, the application therefor may be made by the attorney general, or prosecuting attorney having charge of such action or matter; and whenever so issued, the court or officer allowing it, shall state in their endorsement of the allowance of such writ, that it was allowed upon such application.

Serving writs.

SEC. 61. Writs of habeas corpus can only be served by an elector of some county within this state; and the service thereof shall not be deemed complete, unless the party serving the same, shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up of such prisoner.

Application of
last section.

SEC. 62. But the last section shall not apply, so far as provision is therein made for the payment of fees, to any case where the writ is sued out by the attorney general or a prosecuting attorney.

Mode of serving
writ.

SEC. 63. Every writ of habeas corpus or certiorari, issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; or, if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer, or other person of proper age, having charge for the time of such prisoner.

SEC. 64. If the person upon whom the writ ought to be served,

conceal himself, or refuse admittance to the party attempting to serve such writ, it may be served by fixing it in some conspicuous place, on the outside, either of his dwelling house, or of the place where the party is confined.

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How served
when person
conceals himself
&c.

Officers, &c., to
obey writs serv-
ed on them.

SEC. 65. It shall be the duty of every sheriff, coroner, constable or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon the payment or tender of the charges allowed by law, to obey and return such writ according to the exigency thereof; and it shall be the duty of every other person upon whom such writ shall be served, having the custody of the individual for whose relief the writ shall be issued, to obey and execute such writ, according to the command thereof, without requiring the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

SEC. 66. It shall, in like manner, be the duty of the person upon whom any writ of certiorari, issued pursuant to the provisions of this chapter, shall be served, upon payment or tender of the fees allowed by law for making a return to such writ, and for copying the warrant or other process to be annexed thereto, to obey and return the same according to the exigency thereof.

Persons to obey
certiorari.

SEC. 67. Every officer allowing a writ of habeas corpus directed to any person other than a sheriff, coroner, constable, or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs, for similar services.

Fees to persons
not officers.

SEC. 68. If the writ be returnable at a certain day, such return shall be made, and such prisoner produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Time for return-
ing writ.

SEC. 69. The several provisions contained in this chapter shall be construed to apply, so far they may be applicable, to every writ of habeas corpus authorized to be issued by any statute of this state.

Application of
this chapter.

CHAPTER 135.

OF WRITS OF SCIRE FACIAS.

SECTION 1. A writ of scire facias may be issued out of the supreme court, in behalf of the people of this state, upon the relation of the attorney general, or of any private person, for the purpose of vacating and annulling any letters patent granted by the people of this state, in the following cases:

Writs to annul
letters patent.

1. When it shall be alleged that such letters patent were obtained by means of some fraudulent suggestion, or concealment of a material fact, made by the person to whom the same were issued, or made with his consent or knowledge:

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2. When it shall be alleged that such letters patent were issued through mistake, and in ignorance of some material fact:

3. When the patentee, or those lawfully claiming under him, shall have done or omitted any act, in violation of the terms and conditions upon which such letters patent were granted; or shall by any other means have forfeited the interest acquired under the same.

**Writ to vacate
acts of incorpo-
ration.**

SEC. 2. A writ of scire facias may also be issued out of the supreme court, upon the relation of the attorney general, against any corporation created or renewed by any act of the legislature, for the purpose of vacating and annulling such act, on the ground that the same was passed upon some fraudulent suggestion, or concealment of a material fact, made by the persons incorporated by such act, or made with their consent or knowledge, but no such writ shall be issued under the provisions of this section, except when the legislature shall specially direct the attorney general to prosecute the same.

Contents of writ.

SEC. 3. In every writ of scire facias issued under either of the two preceding sections, the particular matters and circumstances upon which the same is founded, shall be set forth with such convenient certainty, that the defendants may be fully apprized of the general nature thereof.

Judgment.

SEC. 4. If the matters duly alleged in such writ, shall be found for the people, or the defendants shall make default, judgment shall be rendered, that the letters patent, or act of incorporation, specified in the writ, as the case may be, be vacated and annulled.

**Writs of scire
facias in other
cases.**

SEC. 5. Writs of scire facias may be issued in all other cases where the same are or shall be allowed by any law of this state, and the provisions of this chapter shall apply to such writs, so far as the same may be applicable.

**Issuing, teste,
and return.**

SEC. 6. Writs of scire facias may be issued, tested and returned, at the same time, and in the same manner as original writs in personal actions, and, except when otherwise specially provided, it shall not be necessary to have any particular number of days between the teste and return day thereof.

Service of writ.

SEC. 7. It shall be the duty of the sheriff or other officer to whom any such writ of scire facias may be directed, to endeavor to serve the same, notwithstanding any directions he may receive to the contrary, from the plaintiff therein, or his attorney.

Mode of serving.

SEC. 8. Every such writ shall be served by delivering a copy thereof, certified by the officer serving the same to the party required to be summoned; or by leaving the same at his dwelling house, with some person of proper age; and if such writ be issued against a corporation, it shall be served in the same manner as prescribed for the service of an original summons upon a corporation.

**Appearance of
defendants, &c.**

SEC. 9. In all cases where the writ shall be returned duly served, the appearance of the persons or corporations so summoned, shall be entered by the clerk as in other cases; and the plaintiff shall be entitled, on the filing of such writ, so returned, to enter a rule requiring the defendant to plead to such writ, within twenty days after service of notice thereof, notice of which rule shall be served in the same manner, and with like effect, as in personal actions.

**Notice to absent
defendants.**

SEC. 10. If the sheriff return that any person who was the original defendant in a judgment, and was required to be summoned by such writ, cannot be found, and has no dwelling house within his county, the court shall, after the filing of the scire facias, direct a rule to

be entered, requiring the defendant to appear and plead to such scire facias, within twenty days after the last publication of such rule, as hereinafter provided.

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SEC. 11. A copy of such rule, certified by the clerk of the court, shall be published for four weeks successively in such paper as the court may direct.

Publication.

SEC. 12. If such defendant shall not appear and plead to such scire facias within the time limited by the rule, the plaintiff shall be entitled, upon filing an affidavit of the due publication of said rule, to enter the default of the defendant, and judgment shall be rendered upon such default, in like manner as if the writ had been returned served.

Entering default, &c.

SEC. 13. No declaration shall be required to be filed upon the scire facias; but when executors or administrators are plaintiffs in any such writ, they shall make proof of their letters testamentary or of administration in the scire facias, in the same manner as in a declaration; and the defendant shall plead to such writ, in the same manner as to a declaration.

Declaration unnecessary, &c.

SEC. 14. No proceeding shall be had on any writ of scire facias, unless the same shall have been served, or notice thereof published, as hereinbefore provided; and no proceeding shall be had against any bail prosecuted by scire facias, unless such writ shall have been personally served.

Writs to be served, &c., in all cases.

SEC. 15. Whenever judgment shall be rendered against the defendant, upon any scire facias brought to vacate letters patent, or to vacate any act of incorporation, a copy of the record of such judgment shall be forthwith filed in the office of the secretary of state.

Copies of certain judgments to be filed with secretary of state.

SEC. 16. If the record relate to letters patent, the secretary shall forthwith transmit to the commissioner of the land office, a statement of the substance and effect of such recovery, and of the time when the judgment was rendered; and the lands and tenements granted by such letters patent, may thereafter be disposed of by such commissioner, in the same manner as if such letters patent had never been issued.

When statement to be transmitted to land office.

SEC. 17. If the record relate to an act of incorporation, the secretary of state shall forthwith cause notice of the substance and effect of such recovery, to be published for four successive weeks in some newspaper published at the capital, and the like time in a newspaper printed in the county where the principal office or place of business of the company created by such act, shall be, if one be there published.

Notice in certain cases.

SEC. 18. Whenever any judgment shall be rendered for the vacating and annulling of any act of incorporation, pursuant to the provisions of this chapter, any court having equity jurisdiction shall have the same powers to restrain the corporation created by such act, to appoint a receiver of its property and effects, and to take an account and make distribution thereof among its creditors as in cases of the voluntary dissolution of corporations; and it shall be the duty of the attorney general, immediately after the rendering of any judgment vacating and annulling any such act of incorporation, to institute proceedings for that purpose in said court.

Equity jurisdiction and powers.

OF INFORMATIONS IN THE NATURE OF A QUO WARRANTO, AND IN CERTAIN
OTHER CASES.

Informations of
course, in what
cases.

SECTION 1. An information in the nature of a quo warranto, may be filed in the supreme court, either in term time or vacation, by the attorney general, against individuals, upon his own relation, or upon the relation of any private party, and without applying to such court for leave, in either of the following cases :

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state ; or any office in any corporation created by the authority of this state :

2. Whenever any public officer, civil or military, shall have done or suffered any act, which by the provisions of law, shall work a forfeiture of his office :

3. When any association, or number of persons shall act as a corporation within this state, without being legally incorporated.

Summons there-
on.

SEC. 2. Whenever any such information shall be filed, a summons shall be issued thereon, which shall be served and returned in like manner as in personal actions ; and whenever the same shall be returned served, the clerk shall enter the defendant's appearance.

What may be set
forth in certain
cases.

SEC. 3. Whenever any such information shall be filed against any person for usurping any office, the attorney general, in addition to the other matters required to be set forth in the information, may also set forth therein the name of the person rightfully entitled to such office, with an averment of his right thereto.

Judgment on in-
formation for
usurping office.

SEC. 4. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so entitled ; or only upon the right of the defendant, as justice shall require.

Proceedings if
judgment for re-
lator.

SEC. 5. If judgment be rendered upon the right of the person so averred to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing any official bond which may be required by law, to take upon him the execution of the office ; and it shall be his duty, immediately thereafter, to demand of the defendant in such information, all the books and papers in his custody or within his power, belonging to such office.

Penalty on defen-
dant for refusing
to deliver books,
&c.

SEC. 6. If such defendant shall refuse or neglect to deliver over any such books or papers, pursuant to such demand, he shall be deemed guilty of a misdemeanor ; and the like proceedings shall be had, and with like effect, to compel the delivery of such books and papers, as are prescribed in chapter one hundred and thirty-three of these revised statutes.

Suggestion of
damages.

SEC. 7. If judgment be rendered upon the right of the person so averred to be entitled, in favor of such person, he may, at any time within one year after the rendering of such judgment, make and file a suggestion, that he has sustained damages to a certain amount, by reason of the usurpation by the defendant, of the office from which such defendant has been evicted, and praying judgment therefor.

Proceedings on
suggestion.

SEC. 8. Such suggestion shall be entered, with the proceedings thereon, upon the record of the judgment, or shall be attached thereto, as a continuation of the same ; it shall be served on the defendant or his attorney, and a rule to plead thereto shall be entered, and notice

thereof given, in the same manner, and with the like effect, as upon the filing of a declaration in personal actions.

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SEC. 9. The defendant may plead the general issue to such suggestion, which shall be, in substance, the same as in personal actions; and on trial of any such issue, the plaintiff therein shall be entitled to recover the damages which he may have sustained by reason of the usurpation.

Plea to suggestion.

SEC. 10. All issues of fact or of law, that shall be joined between the parties, shall be tried and determined in the supreme court, or in the circuit court of such county, as the supreme court may by special rule direct, and execution may issue on any judgment recovered on such trial as in other cases.

Determination of issues.

SEC. 11. If no issue of fact be joined upon such suggestion, or if judgment be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry shall be issued to the sheriff of the county within which the duties of the office are to be exercised, if the same be local, and if not local, to the sheriff of any county within this state, to assess the damages sustained by the person filing such suggestion, by reason of the premises; or an order may be entered that such damages be assessed at a circuit court, to be held in any county of this state.

Assessment of damages on default, &c.

SEC. 12. An information in the nature of a quo warranto may also be filed by the attorney general, upon his own relation, or upon the relation of any private party, on leave granted, against any corporate body, whenever such corporation shall,

Information against corporations.

1. Offend against any of the provisions of the act or acts, creating, altering, or renewing such corporation: or,
2. Violate the provisions of any law, by which such corporation shall have forfeited its charter by misuser: or,
3. Whenever it shall have forfeited its privileges and franchises by non-user: or,
4. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges and franchises: or,
5. Whenever it shall exercise any franchise or privilege not conferred upon it by law:

And it shall be the duty of the attorney general, whenever he shall have good reason to believe that the same can be established by proof, to file such information in every case of public interest; and also, in every other case in which satisfactory security shall be given to indemnify the people of this state against all costs and expenses to be incurred thereby.

SEC. 13. Leave to file such information may be granted by the supreme court in term time, or by any justice thereof, but by no other officer, upon the application of the attorney general in vacation; and such court or justice may, in their discretion, direct notice of such application, to be given to such corporation or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

Who to grant leave.

SEC. 14. Upon such leave being granted, and endorsed upon the information, under the hand of the clerk of the court, or of the justice granting the same, the attorney general may forthwith file the same, and thereupon may issue a writ of summons against such corporation, commanding the sheriff to summon such corporation to appear in the said court, and to answer the said information.

Summons on information.

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When summons
not necessary.

Sec. 15. But when such corporation shall appear by counsel pursuant to the notice above authorized to be given, and shall be heard in opposition to granting such leave, the court or justice granting leave, may also direct a rule to be entered, requiring the defendants to appear and plead to such information, within twenty days after service of a copy thereof, and notice of said rule; and in such case it shall not be necessary to issue a writ of summons.

Proceedings on
return of sum-
mons.

Sec. 16. Whenever any writ of summons, issued upon an information in the nature of a quo warranto, shall be returned duly served, the attorney general may thereupon enter a rule, in vacation or in term, requiring the defendants to plead to the information filed against them in twenty days after service of a copy thereof; and the same shall be served in the same manner, and with like effect, as rules upon declarations in personal actions.

Rule for appear-
ance.

Sec. 17. Whenever any such writ shall be returned not served by reason of the defendants, or the officers of the defendants not being found within the county, the court shall direct a rule to be entered, requiring the defendant, whether an individual or a corporation, to appear and plead to such information, within twenty days after the last publication of such rule as hereinafter provided.

Publication, &c.

Sec. 18. A certified copy of such rule shall be published for four weeks successively, in such paper as the court may direct; and if the defendant shall not appear and plead to such information, within the time limited in the rule, the plaintiff shall be entitled, upon filing an affidavit of the due publication of such rule, to enter the default of the defendant, in like manner as if the writ had been duly served.

Information
against several
persons.

Sec. 19. When several persons claim to be entitled to the same office or franchise, one information may be filed against all such persons, in order to try their respective rights to such office or franchise.

Enlarging time to
plead, &c.

Sec. 20. An order may be made enlarging the time to plead or demur, upon an information in the nature of a quo warranto, by the supreme court, or by a justice thereof; but by no other person.

Judgment on
conviction.

Sec. 21. Whenever any defendant, whether a natural person or a corporation, against whom an information in the nature of a quo warranto shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise or privilege; and also, that the attorney general, or the relator, if there be one, recover his costs against such defendant.

Court may im-
pose a fine, &c.

Sec. 22. The court may also, in its discretion, impose a fine upon any such person or corporation against whom such judgment shall be rendered, not exceeding two thousand dollars; which fine, when collected, shall be paid to the state treasurer, and shall by him be distributed and paid to the several county treasurers to the credit of the several library funds, in the same proportions that the income of the primary school fund was apportioned to the several counties, at the then last apportionment of such school moneys.

Judgments
against corpora-
tions.

Sec. 23. Whenever it shall be found or adjudged that any corporation against which an information in the nature of a quo warranto shall have been filed, has, by any mis-user, non-user, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said corporation be dissolved.

SEC. 24. If judgment be rendered upon any such information against any corporation, or against any persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of any such corporation.

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Collection of costs.
12 Wend., 277.

SEC. 25. Whenever any such judgment shall be rendered, any court having equity jurisdiction shall have the same powers to restrain the corporation against which it is rendered; to appoint a receiver of its property and effects; and to take an account and make distribution thereof among its creditors, as in case of the voluntary dissolution of a corporation; and it shall be the duty of the attorney general, immediately after the rendering of any such judgment, to institute proceedings for that purpose in said court.

Powers of courts having equity jurisdiction.

SEC. 26. Whenever any such judgment shall be rendered against a corporation, a copy of the record of such judgment shall be forthwith filed in the office of the secretary of state; and such secretary shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper printed at the seat of government, and in a newspaper printed in the county where the principal office or place of business of such corporation shall be, if a newspaper be there printed.

Record of judgment to be filed, &c.

SEC. 27. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the people of this state, or to any officers, for their use, an information for the recovery of such property, alleging the grounds of such forfeiture, may be filed by the attorney general in the circuit court; upon which the like proceedings and judgment shall be had, if the information be to recover personal property, as in actions of trover, and if to recover real property, as in actions of ejectment.

Informations for forfeited property.

CHAPTER 137.

OF WRITS OF MANDAMUS AND PROHIBITION.

SECTION 1. Whenever any writ of mandamus shall be issued out of the supreme court of this state, the person, body or tribunal, to whom the same shall be directed and delivered, shall make return to the first writ of mandamus; and for a neglect so to do, shall be proceeded against as for a contempt.

Return to first writ of mandamus.

SEC. 2. Whenever a return shall be made to any such writ, the person prosecuting the same may demur or plead to all or any of the material facts contained in the said return, and the like proceedings shall be had thereon for the determination thereof, as might have been had if the person prosecuting such writ had brought his action on the case for a false return.

Pleadings and proceedings.

SEC. 3. Issues of fact joined in any such proceeding, shall be tried in the county within which the material facts contained in the mandamus shall be alleged to have taken place.

Trial of issues of fact.

SEC. 4. In case a verdict shall be found for the person suing such writ, or if judgment be given for him upon demurrer, or by default, he shall recover damages and costs, in like manner as he might have

Damages, &c.

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CHAPTER 137.Recovery to bar
another action.

done in such action on the case as aforesaid ; and a peremptory mandamus shall be granted to him without delay.

SEC. 5. A recovery of damages by virtue of this chapter, against any party who shall have made a return to a writ of mandamus, shall be a bar to any other action against the same party for the making of such return.

Time for return.

SEC. 6. The supreme court, or any justice thereof, shall have the same power to enlarge the time for making a return, and pleading thereto, as in personal actions.

Court may im-
pose fine in cer-
tain cases.

SEC. 7. Whenever a peremptory mandamus shall be directed to any public officer, body or board, commanding them to perform any public duty, specially enjoined upon them by any provisions of law, if it shall appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer, or member of such body or board, which fine, when collected, shall be paid to the state treasurer, and be by him distributed and paid to the several county treasurers, in the manner and for the purpose specified in the twenty-second section of the last preceding chapter.

Payment of fine
to bar action for
penalty.

SEC. 8. The payment of such fine shall be a bar to any action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

Writs of prohibi-
tion.

SEC. 9. Writs of prohibition shall only be issued out of the supreme court ; and such writs shall be applied for upon affidavits, by motion, in the same manner as writs of mandamus ; and if the cause shown shall appear to the court to be sufficient, a writ shall be thereupon issued, which shall command the court and party to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of the said supreme court, and the further order of such court thereon ; and then to show cause why they should not be absolutely restrained from any further proceedings in such suit or matter.

Service and re-
turn.

SEC. 10. Such writ shall be served upon the court and party to whom it shall be directed, in the same manner as a writ of mandamus ; and a return shall in like manner be made thereto by such court, which may be enforced by attachment.

Proceedings
when party
adopts return.

SEC. 11. If the party to whom such writ of prohibition shall have been directed, shall, by an instrument in writing, to be signed by him, and annexed to such return, adopt the same return, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter, and the person prosecuting such writ may take issue or demur to the matters so relied upon by such defendant ; and the like proceedings shall be had for the trial of issues of law or fact joined between the parties, and for the rendering of judgment thereupon, as in personal actions.

Proceedings if re-
turn not adopted.

SEC. 12. If the party to whom such writ of prohibition shall be directed, shall not adopt such return as above provided, the party prosecuting such writ shall bring on the argument of such return as upon a rule to show cause ; and he may, by his own affidavit, and other proofs, controvert the matters set forth in such return.

Judgment if re-
turn not adopted.

SEC. 13. The court, after hearing the proofs and allegations of the

parties, shall render judgment, either that a prohibition absolute, restraining the said court and party from proceeding in such suit or matter, do issue, or a writ of consultation, authorizing the court and party to proceed in the suit or matter in question.

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Sec. 14. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; but if judgment be given against such party, a writ of consultation shall be issued as above provided.

Judgment if return adopted.

CHAPTER 138.

WRITS OF ERROR AND CERTIORARI.

SECTION 1. Writs of error in civil and criminal cases, upon any final judgment or determination, may issue of course, out of the supreme court, in vacation as well as in term, and shall be returnable to the same court.

Writs of error may issue of course.
9 Wend., 34.

Sec. 2. No writ of error shall operate to stay or supersede the execution in any civil action, unless the plaintiff in error, with two sufficient sureties, or three sufficient sureties without the plaintiff in error, shall give bond to the defendant in error, with condition that the plaintiff in error shall prosecute his writ to effect, and shall pay and satisfy such judgment as shall be rendered against him thereon.

Not to stay proceedings unless bond given.
1 Mass., 156.

Sec. 3. The sufficiency of the sureties, and the sum for which the bond shall be given, shall be determined in each case, by any justice of the supreme court, or circuit court commissioner; but the penalty of such bond shall not be less than double the amount of the judgment upon which the writ of error is brought, if such judgment be against the plaintiff in error, nor in any case less than one hundred dollars.

Sufficiency of sureties, by whom determined, &c.

Sec. 4. The bond, if any be given, shall be filed in the office of the clerk of the court in which the judgment was rendered at the time of serving the writ on such clerk, and notice thereof shall be given to the defendant in error, or his attorney, and no execution shall thereafter be issued upon the judgment complained of, during the pendency of the writ of error; and if any execution shall have been issued, all further proceedings thereon shall be stayed, upon the officer holding such execution being served with a certificate of the service of such writ, and the filing of such bond, signed by the clerk with whom such bond shall be filed.

Bond to be filed, and notice given, &c.

Sec. 5. The proceedings upon writs of error, as to the assignment of errors, and as to the appearance of the defendant in error, and the pleadings, judgment, and all other matters not herein provided for, shall be according to the course of the common law, as modified by the practice and usage in this state, and such general rules as shall be made by the supreme court.

Proceedings on writs of error.
8 Mass., 383.
16 do 384.

Sec. 6. No writ of error upon a judgment of conviction for treason, or for murder in the first degree, shall issue, unless allowed by one of the justices of the supreme court, after notice given to the attorney general.

Allowance of writ in certain cases.

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When writ not
to delay execu-
tion, &c. without
order for stay.

Further order,
&c.

Within what
time writ to be
brought.

In case of dis-
ability.

In case of death
of party.

Writ not to issue
after five years.

Writ may issue
within two years
after action of
debt or scire fa-
cias.

Writs of certio-
rari, how issued
and made return-
able.

Allowance of
writ.

Within what time
certiorari to be
brought.

SEC. 7. Writs of error upon judgments in all other criminal cases, shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless they shall be allowed by one of the justices of the supreme court, with an express order thereon for a stay of proceedings on the judgment or sentence.

SEC. 8. When a stay of proceedings shall be ordered, as provided in the preceding section, the justice may, at the time of making such order, make such further order as the case may require, for the custody of the plaintiff in error, or for letting him to bail; or the party may, upon a writ of habeas corpus, procure his enlargement upon giving bail, if entitled thereto.

SEC. 9. All writs of error upon any judgment or final determination, rendered in any cause, in any court of law, and of record in this state, shall be brought within two years after the rendering of such judgment or final determination, and not after, except in the cases specified in the two next sections.

SEC. 10. If any person against whom any such judgment shall be rendered, or final determination made, shall be at the time, either,

1. Within the age of twenty-one years : or,

2. Insane : or,

3. Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence, for any term less than for life : or,

4. A married woman :

The time during which such disability shall continue, shall not be deemed any portion of the time above limited for bringing a writ of error ; but such person may bring such writ after the time so limited, and within two years after such disability shall be removed.

SEC. 11. If the person entitled to bring such writ shall die, during the continuance of any disability specified in the preceding section, his heirs, devisees, executors or administrators entitled to bring such writ, may bring the same after the time herein limited for that purpose, and within two years after such death.

SEC. 12. But the existence of any disability specified in the preceding sections, shall not authorize the bringing of a writ of error upon any judgment after the expiration of five years from the time of rendering the same.

SEC. 13. If an action of debt, or a writ of scire facias, be brought on any judgment, a writ of error to reverse the judgment may be sued out at any time within two years after the bringing of such action of debt or writ of scire facias.

Writ of Certiorari.

SEC. 14. All writs of certiorari to correct errors in proceedings that are not according to the course of the common law, shall be issued out of and be made returnable to the supreme court, according to the practice heretofore established, and subject to such regulations as shall from time to time be made by the general rules of the supreme court.

SEC. 15. Writs of certiorari may be allowed by any justice of the supreme court, or circuit court commissioner.

SEC. 16. No such writ of certiorari shall be issued, to correct any proceedings, unless such writ be brought within the same time after such proceedings shall have been had, as is limited by this chapter for bringing a writ of error upon a judgment.

Sec. 17. Writs of error and of certiorari in civil cases, shall be indorsed in the same cases, and with the like effect as original writs, by some responsible person as surety for costs.

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CHAPTER 138.

Sec. 18. The party prevailing on a writ of certiorari in any proceeding of a civil nature, shall be entitled to his costs against the adverse party in all cases; and in case such writ shall appear to have been brought for the purpose of delay or vexation, the court may award double costs to the prevailing party.

Indorsement of
writs of error
and certiorari.
Costs on certio-
rari.

TITLE XXVI.

OF THE LIMITATION OF ACTIONS.

Chapter 139. Of the Limitation of Actions relating to Real Property.
Chapter 140. Of the Limitation of Personal Actions.

CHAPTER 139.

OF THE LIMITATION OF ACTIONS RELATING TO REAL PROPERTY.

No action or entry after twenty years, except, &c.
7 Pick., 153.

SECTION 1. No person shall commence an action for the recovery of any lands, nor make an entry thereupon, unless within twenty years after the right to make such entry or bring such action first accrued, or within twenty years after he, or those from, by or under whom he claims, shall have been seized or possessed of the premises, or shall have received the rents and profits of the same or some part thereof, except as is hereinafter provided.

Computation of time, if right accrued to ancestor &c.

SEC. 2. If such right or title accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any other person, from, by, or under whom he claims, the said twenty years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor, or other person.

When right deemed to have accrued.

SEC. 3. In the construction of this chapter, the right to make an entry or bring an action to recover land, shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say :

1. Whenever any person shall be disseized, his right of entry or of action shall be deemed to have accrued at the time of such disseizin :

2. When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by curtesy, or other estate, intervening after the death of such ancestor or devisor, in which case his right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation :

9 Mass., 508.
15 do. 471.

3. When there is such an intermediate estate, and in all other cases where the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time :

4. The preceding clause shall not prevent any person from entering, when entitled to do so by any forfeiture, or breach of condition,

but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred, or the condition broken :

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5. In all cases not otherwise provided for, the right shall be deemed to have accrued when the claimant, or the person under whom he claims, first became entitled to the possession of the premises, under the title upon which the entry or action is founded.

SEC. 4. If any sole corporation shall be disseized, any of his successors may enter upon the premises, or may bring an action for the recovery thereof, at any time within five years after the death, resignation, or removal of the person so disseized, notwithstanding the twenty years after such disseizen shall have expired.

Limitation after
disseizin of sole
corporation.

SEC. 5. If, at the time when any right of entry or of action, upon or for any lands shall first accrue as aforesaid, the person entitled to such entry or action, shall be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person, or any one claiming from, by, or under him, may make the entry or bring the action, at any time within ten years after such disability shall be removed, notwithstanding the twenty years before limited in that behalf shall have expired.

Cases of disability.

SEC. 6. If the person first entitled to make such entry or bring such action, shall die during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment shall have been had of or upon the title, right or action which accrued to him, the entry may be made, or the action brought by his heirs, or any other person claiming from, by or under him, at any time within ten years after his death, notwithstanding the said twenty years shall have expired.

Death of persons
under disability.

SEC. 7. If, at the time when such right of entry or of action shall first accrue, the person entitled thereto shall be under any of the disabilities before mentioned, and shall die without having recovered the premises, no further time for making such entry or bringing such action, beyond that herein before prescribed, shall be allowed by reason of the disability of any other person.

No allowance
for any second
disability.
6 Mass., 328.
6 East, 80.

SEC. 8. No person shall be deemed to have been in possession of any lands, within the meaning of this chapter, merely by reason of having made an entry thereon, unless he shall have continued in open and peaceable possession of the premises for at least one year next after such entry, or unless an action shall be commenced upon such entry and seizen, within one year after he shall be ousted or dispossessed of the premises.

Entry on land
when effectual.

SEC. 9. When the right of action or entry shall have accrued before the time when this chapter shall take effect as a law, the same shall not be affected by this chapter; but all such actions and rights shall be governed and determined according to the law under which the right accrued, in respect to the limitation of such actions or rights of entry.

Rights accrued
before this chap-
ter takes effect.
1839, p. 233.
1843, p. 43.

SEC. 10. If any action, of which the commencement is limited by this chapter, shall be abated by the death of any party thereto, or if, after verdict for the demandant or plaintiff, the judgment shall be arrested, or if judgment in any such action be given for the demandant or plaintiff, and the judgment shall be reversed for error therein, the demandant or plaintiff, or any person claiming from, by, or under him, may bring an action for the same cause, at any time within one year after the determination of the original action, or after the reversal of the judgment.

Action after
abatement, rever-
sal, &c.

**TITLE XXVI.
CHAPTER 140.**

Suits by the people of this state.
4 Mass., 528.

SEC. 11. No suit for the recovery of any lands, shall be commenced by or in behalf of the people of this state, unless within twenty years after the right or title of the people of the state therein first accrued, or within twenty years after the said people or those from or through whom they claim, shall have been seized or possessed of the premises, or shall have received the rents and profits of the same, or some part thereof.

CHAPTER 140.

OF THE LIMITATION OF PERSONAL ACTIONS.

Certain actions to be brought within six years.
1 Mason, 243.
2 do. 311.
2 Gallis, 477.

SECTION 1. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards, that is to say :

1. All actions of debt, founded upon any contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the United States :

2. All actions upon judgments rendered in any court, other than those above excepted :

3. All actions for arrears of rent :

4. All actions of assumpsit, or upon the case, founded upon any contract or liability, express or implied :

5. All actions for waste :

6. All actions of replevin and trover, and all other actions for taking, detaining, or injuring goods or chattels :

7. All other actions on the case, except actions for slanderous words, or for libels.

Certain actions to be brought within two years.

SEC. 2. All actions for trespass upon land, or for assault and battery, or for false imprisonment, and all actions for slanderous words, and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards.

Actions against sheriffs, &c.
9 Greenl., 74.

SEC. 3. All actions against sheriffs, for the misconduct or neglect of their deputies, shall be commenced within three years next after the cause of action shall accrue, and not afterwards.

Exceptions.

SEC. 4. None of the provisions of this chapter shall apply to any action brought upon any bills, notes or other evidences of debt issued by any bank.

Cases of accounts current.
2 Mass., 217.
3 Pick., 97.
8 do. 187.
6 do. 362.
4 Greenl., 377.
6 do. 308.

SEC. 5. In all actions of debt or assumpsit, brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

Disabilities.
14 Mass., 203.
17 do., 180.

SEC. 6. If any person entitled to bring any of the actions mentioned in this chapter, shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned in the state prison, or absent from the United States, such person may bring the said actions within the times in this chapter respectively limited, after the disability shall be removed.

General limitation.

SEC. 7. All personal actions on any contract, not limited by the foregoing sections, or by any law of this state, shall be brought within

ten years after the accruing of the cause of action, and not afterwards.

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SEC. 8. When any person shall be disabled to prosecute an action in the courts of this state, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed a part of the respective periods herein limited for the commencement of any of the actions before mentioned.

Suits by aliens.
3 Cranch, 454.

SEC. 9. If at the time when any cause of action mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced within the time herein limited therefor, after such person shall come into this state, and if after any cause of action shall have accrued, the person against whom it shall have accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

Case of defendants out of the state.
3 Mass., 271.
7 do., 515.
17 do., 55.
1 Pick., 263.

SEC. 10. If any person entitled to bring any of the actions before mentioned in this chapter, or liable to any such actions, shall die before the expiration of the time herein limited, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, or the claim may be proved as a debt against the estate of the deceased person, as the case may be, at any time within two years after granting letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

Case of death of either party.

SEC. 11. If, in any action, duly commenced within the time limited in this chapter, and allowed therefor, the writ or declaration shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of favor (*form*), or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

Remedy in case of reversal, arrest of judgment, &c.
2 Pick., 605.

SEC. 12. If any person who is liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action, from the knowledge of the person entitled thereto, the action may be commenced at any time within two years after the person who is entitled to bring the same, shall discover that he has such cause of action, although such action would be otherwise barred by the provisions of this chapter.

Fraudulent concealment by defendant.
3 Mass., 201.
1 Pick., 435.
3 do., 74.
20 J. R., 33.

SEC. 13. In actions founded upon contract express or implied, no acknowledgment or promise shall be evidence of a continuing contract, whereby to take a case out of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party to be charged thereby.

New promise, &c. to be in writing.

SEC. 14. If there be two or more joint contractors or joint execu-

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CHAPTER 140.**

Promise by one
of several joint
contractors.

2 Pick., 581.

3 do. 291.

4 do. 382.

7 Greenl., 26.

Proceedings in
actions against
such joint con-
tractors.

tors or administrators of any contractor, no such joint executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason of any acknowledgment or promise, made or signed by any other or others of them.

SEC. 15. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

1b.

SEC. 16. If, in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, it shall be a good replication to such plea, if true in fact, that the action was, by the provisions of this chapter, barred against the person so named in the plea, but not so barred by reason of such acknowledgment or promise, as against such defendant.

Effect of part
payment.

SEC. 17. Nothing contained in the four preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest, made by any person; but no endorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

In case of joint
contractors.

SEC. 18. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any payment made by any other or others of them.

Limitation of de-
mands alleged as
set-offs.

SEC. 19. All the provisions of this chapter shall apply to the case of any debt or contract alleged by way of set off on the part of a defendant; and the time of the limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action was commenced, provided such debt or contract would have been barred according to law, before the accruing of the claim or demand upon which such defendant is sued.

Limitation of
suits by the peo-
ple, &c.

SEC. 20. The limitations hereinbefore prescribed for the commencement of actions, shall apply to the same actions when brought in the name of the people of this state, or in the name of any officer or otherwise, for the benefit of the state, in the same manner as to actions brought by individuals.

Limitation of
suits for penal-
ties.

SEC. 21. All actions and suits for any penalty or forfeiture on any penal statute, brought in the name of the people of this state, shall be commenced within two years next after the offence was committed, and not afterwards, except in the cases mentioned in the next section.

Of suits limited
by other statutes.

SEC. 22. The preceding section shall not apply to any suit which is or shall be limited by any statute, to be brought within a shorter or longer time than is prescribed in said section; but such suit shall be brought within the time that may be limited by such statute.

SEC. 23. None of the provisions of this chapter, respecting the ac-

knowledge of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise made before the thirty-first day of August, in the year of our Lord one thousand eight hundred and thirty-eight; but every such last mentioned acknowledgment or promise, although not made in writing, shall have the same effect as if no provisions relating thereto had been herein contained.

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CHAPTER 140.**

Provisions as to written promise, &c., to what cases not to apply.

Sec. 24. Every judgment and decree, in any court of record of the United States, or of this or any other state, shall be presumed to be paid and satisfied, at the expiration of ten years after the judgment or decree was entered.

Presumption of payment of a judgment.

Sec. 25. No personal action shall be maintained, which, at the time when this chapter shall take effect as law, shall have been barred by the statute of limitation in force at the time when the cause of action accrued; and when any right of action shall have accrued before the time when this chapter shall take effect, it shall not be affected by this chapter, but all such causes of action shall be governed and determined according to the law under which the right of action accrued, in respect to the limitation of such actions.

Actions barred, and rights accrued under former statutes.

TITLE XXVII.

OF THE PUNISHMENT OF FRAUDULENT DEBTORS, AND THE RELIEF OF
INSOLVENT DEBTORS.

- Chapter 141. Of the Punishment of Fraudulent Debtors.
 Chapter 142. Of the Relief of Insolvent Debtors, on the application of an Insolvent and his Creditors.
 Chapter 143. Of the Relief of Insolvent Debtors from Imprisonment.
 Chapter 144. General Provisions applicable to Proceedings under the two last preceding chapters.
 Chapter 145. Of the Powers, Duties, and Obligations of Assignees of Insolvent Debtors under this title.
 Chapter 146. Of the Relief of Poor Debtors from Imprisonment.

CHAPTER 141.

OF THE PUNISHMENT OF FRAUDULENT DEBTORS.

No person to be imprisoned for debt.
 19 Wend., 430,
 404. 12 do. 229.
 4 Paige, 397.
 1839, p. 76.

Exceptions.
 9 Wend., 503.

Plaintiff may apply for a warrant to arrest defendant.

Evidence to be adduced in support of application.

SECTION 1. No person shall be arrested or imprisoned on any civil process issuing out of any court of law, or on any execution issuing out of a court of equity, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract expressed or implied, or for the recovery of any damages for the non-performance of any contract.

SEC. 2. The preceding section shall not extend to proceedings as for contempts to enforce civil remedies; nor to actions for fines, penalties, or forfeitures, or on promises to marry, or for moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment.

SEC. 3. In all cases where, by the preceding provisions of this chapter, a defendant cannot be arrested or imprisoned, it shall be lawful for the plaintiff who shall have commenced a suit against such defendant, or shall have obtained a judgment or decree against him, in any court of record, or justice's court, to apply to any judge of the court in which such suit is brought, or to any circuit court commissioner, or to any justice of the peace before whom such suit is brought, or judgment obtained, or before whom such proceedings shall have been transferred, for a warrant to arrest the defendant in such suit.

SEC. 4. No such warrant shall issue unless satisfactory evidence shall be adduced to such officer, by the affidavit of the plaintiff, or of some other person or persons, that there is a debt or demand due to the plaintiff from the defendant, and specifying the nature and amount thereof as near as may be, for which the defendant, according to the

provisions of this chapter, cannot be arrested or imprisoned, and establishing one or more of the following particulars:

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1. That the defendant is about to remove any of his property out of the jurisdiction of the court in which the suit is brought, with intent to defraud his creditor or creditors: or,

2. That the defendant has property or rights in action, which he fraudulently conceals, or that he has rights in action, or some interest in any public or corporate stock, money, or evidence of debt, which he unjustly refuses to apply to the payment of any judgment or decree which shall have been rendered against him, belonging to the complainant: or,

3. That he has assigned, removed or disposed of, or is about to dispose of any of his property, with the intent to defraud his creditor or creditors: or,

4. That the defendant fraudulently contracted the debt, or incurred the obligation, respecting which such suit is brought.

Sec. 5. Upon such proof being made to the satisfaction of the officer to whom the application shall be made, he shall issue a warrant under his hand, in behalf of the people of this state, directed to the sheriff or any constable of the county within which such officer shall reside, therein briefly setting forth the nature of the complaint, and commanding the officer to whom it shall be directed, to arrest the person named in such warrant, and bring him before such officer without delay; which warrant shall be accompanied by a copy of all affidavits presented to such officer, upon which the warrant issued; which shall be certified by such officer, and shall be delivered to the defendant at the time of serving the warrant, by the officer serving the same.

Warrant to be issued.

Sec. 6. The officer to whom such warrant shall be delivered, shall execute the same by arresting the person named therein, and bringing him before the officer issuing such warrant; or in case of the absence or inability of such officer, before some other officer having jurisdiction in the case, and shall keep him in custody until he shall be duly discharged, or committed as hereinafter provided.

How warrant to be executed.

Sec. 7. On the person so arrested being brought before such officer, he may controvert any of the facts and circumstances on which such warrant issued, and may, at his option, verify his allegations by his own affidavit; and in case of his so verifying the same, the complainant may examine such defendant on oath, touching any fact or circumstance material to the inquiry, and the answers of the defendant on such examination shall be reduced to writing and subscribed by him; and the officer conducting such inquiry shall also receive such other proof as the parties may offer, either at the time of such first appearance, or at such other time as such hearing shall be adjourned to; and in case of an adjournment, such officer may take a recognizance, with or without surety, at his discretion, from the defendant, for his appearance at the adjourned hearing.

Person arrested may controvert facts on which warrant issued.
10 Wend., 608.

Sec. 8. The officer conducting such inquiry, shall have the same authority to issue subpoenas for witnesses, and to enforce obedience to such subpoenas, and to punish witnesses refusing to testify, as are conferred by law upon such officers in cases of other proceedings before them.

Power of officer conducting inquiry.

Sec. 9. If such officer is satisfied that the allegations of the complainant are substantiated, and that the defendant has done, or is about to do, any one of the acts specified in the fourth section of this chapter, upon which a warrant is authorized to be issued, he shall, by a

Commitment of defendant.
10 Wend., 608.



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In what cases
commitment not
to be granted.

commitment under his hand, direct that such defendant be committed to the jail of the county in which such hearing shall be had, to be there detained until he shall be discharged according to law; and such defendant shall be committed and detained accordingly.

SEC. 10. Such commitment shall not be granted, if the defendant shall either,

1. Pay the debt or demand claimed, with the costs of the suit and of the proceedings against him: or,

2. Give security to the satisfaction of the officer before whom the hearing shall be had, that the debt or demand of the plaintiff, with the costs of the suit and proceedings aforesaid, shall be paid within ninety days, if a judgment shall have been recovered thereon; or within ninety days after such judgment shall be obtained, in case no judgment shall have been rendered thereon; or,

3. Enter into a bond to the complainant in a penalty not less than twice the amount of the debt or demand claimed, with such surety or sureties as shall be approved by such officer, conditioned that such defendant will, within thirty days thereafter, apply for an assignment of all his property, and for a discharge, as provided in the one hundred and forty-third chapter of these revised statutes, and diligently prosecute the same until he obtains such discharge.

Defendants com-
mitted to remain
in custody as
prisoners on
criminal process,
&c.

SEC. 11. Any defendant committed as above provided, shall remain in custody in the same manner as other prisoners on criminal process, until a final judgment shall have been rendered in his favor, in the suit prosecuted by the creditor at whose instance such defendant shall have been committed; or until he shall have assigned his property and obtained his discharge, agreeably to the provisions either of the one hundred and forty-second, or of the one hundred and forty-third chapter of these revised statutes; but such defendant may be discharged by the officer committing him, or any other person authorized to discharge the duties of such officer, on such defendant paying the debt or demand claimed, or giving security for the payment thereof, as provided in the tenth section of this chapter, or on his executing the bond mentioned in the third subdivision of said section.

Person commit-
ted may petition
for assignment of
his property.

SEC. 12. Any person committed as above provided, or who shall have given a bond as specified in the third subdivision of the tenth section of this chapter, or against whom any suit shall have been commenced in a court of record or justice's court, in which such person, by the provisions of this chapter, cannot be arrested or imprisoned, may petition for an assignment of his property, and for a discharge, agreeably to the provisions either of the said one hundred and forty-second, or of the said one hundred and forty-third chapter of these revised statutes; and the same proceedings shall be had thereon as is provided by said chapters respectively, and with the like effect.

Fees of officers.

SEC. 13. The fees and compensation of all officers and witnesses, performing services under the provisions of this chapter, shall be the same as are or may be provided by law in criminal cases.

When complain-
ant liable for
costs, &c.
10 Wend., 607.

SEC. 14. Whenever any complaint shall be made against any defendant under the provisions of this chapter, and such complaint shall be dismissed, the complainant shall be liable for all fees to officers and witnesses; and for all legal costs and expenses which the defendant shall have incurred.

Property exempt
from execution.

SEC. 15. Whenever, in this chapter, the removal, concealment or

disposal of any property, is declared to be the ground of any complaint or proceeding, it shall not be deemed to apply to any property which shall be expressly exempted by law from levy and sale under execution.

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SEC. 16. Whenever a bond, given under the tenth section of this chapter, shall become forfeited by the non-performance of the condition thereof, the plaintiff shall be entitled to recover thereon the amount due to him on the judgment obtained in the original suit instituted against the defendant giving such bond.

Recovery on bond.

SEC. 17. Any person who shall remove any of his property out of any county, with intent to prevent the same from being levied upon by an execution, or who shall secrete, assign, convey, or otherwise dispose of any of his property, with intent to defraud any creditor, or to prevent such property from being made liable for the payment of his debts, and any person who shall receive such property with such intent, shall, on conviction thereof, be deemed guilty of a misdemeanor.

Removing or secreting property, &c., a misdemeanor.

SEC. 18. When it shall appear to any officer authorized to entertain any proceedings under this chapter, that any misdemeanor or perjury has been committed by any party or witness, it shall be his duty to take the measures prescribed by law, to cause the offender to appear at the proper court having jurisdiction of the offence, to answer for the same.

Proceedings when misdemeanor or perjury committed.

SEC. 19. No person shall be excused from answering any bill in equity seeking a discovery in relation to any fraud prohibited by this chapter, or from answering as a witness in relation to any such fraud, but no such answer shall be used in evidence in any other suit or prosecution.

In case of a bill in equity.

SEC. 20. Any person imprisoned on any process, who shall be entitled to be discharged under the provisions of this chapter, may bring a writ of habeas corpus or certiorari for that purpose, in the manner provided by law.

Person entitled to be discharged may bring habeas corpus, &c.
9 Wend., 463.

CHAPTER 142.

OF THE RELIEF OF INSOLVENT DEBTORS, ON THE APPLICATION OF AN INSOLVENT AND HIS CREDITORS.

SECTION 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his estate for the benefit of his creditors, and upon the provisions of this chapter being complied with.

Discharge of insolvent debtor.

SEC. 2. The petition for that purpose, shall be signed by him, and by so many of his creditors residing within the United States, as have debts in good faith owing to them by such debtor, then due or thereafter to become due, and amounting to at least two-thirds of all the debts owing by him to creditors residing within the United States.

Petition by whom to be signed.
2 Paige, 602.
3 do. 338.

SEC. 3. Executors and administrators may become petitioning creditors, for the discharge of an insolvent, under the order of the judge of probate to whom they may be liable to account, or a judge of the

Executors, &c., may become petitioning creditors.

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Affidavits of petitioning creditors.

Schedule to be delivered by insolvent with his petition.
1 Wend., 156.

To whom petition may be presented.

Affidavit of insolvent to be annexed to petition.

Order to show cause.

Notice of order.

supreme court, and shall be chargeable only for such sum as they shall actually receive on the dividend of the insolvent estate.

SEC. 4. Every such petition shall be accompanied by the affidavit of each petitioning creditor, to be taken before any officer authorized to administer oaths; which affidavit shall state that the sum specified therein, and annexed to the name of the petitioner subscribed to such petition, is justly due him, or will become due to him at some future time to be specified therein, and shall state the nature of the demand, and whether arising on any written security or otherwise, with the general ground and consideration of such indebtedness; and that neither he, nor any person to his use, hath received from such insolvent, or any other person, payment of any demand or any part thereof, in money or in any other way whatever, or any gift or reward whatever, upon any express or implied trust or confidence that he should become a petitioner for such insolvent.

SEC. 5. Every such insolvent shall annex to and deliver with his petition, to the officer to whom it shall be presented,

1. A full and true account of all his creditors:

2. The place of residence of each creditor, if known to such insolvent; and if not known, the fact to be so stated:

3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, on account, or otherwise:

4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued:

5. A statement of any existing judgment, mortgage, or collateral or other security, for the payment of any such debt: and,

6. A full and true inventory of all the estate, both real and personal, in law and equity, of such insolvent, of the incumbrances existing thereon, and of all the books, vouchers and securities relating thereto.

SEC. 6. Every such petition may be presented to one of the justices of the supreme court, or a circuit court commissioner, or to any county judge.

SEC. 7. An affidavit shall be annexed to the said petition, account and inventory, and shall be subscribed, and sworn to by such insolvent before such officer, who shall certify the same; which affidavit shall be in the following form:

"I, _____, do solemnly swear (or affirm, as the case may be,) that the account of my creditors and the inventory of my estate, which are annexed to my petition, and herewith delivered, are in all respects just and true; and that I have not at any time or in any manner whatever, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have in no instance created or acknowledged a debt for a greater sum than I truly and honestly owed, and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain the prayer of my petition."

SEC. 8. The officer receiving such petition, schedule and affidavit, shall make an order requiring all the creditors of such insolvent to show cause, if any they have, at a certain time and place to be specified by him, why an assignment of the insolvent's estate should not be made, and he be discharged from his debts.

SEC. 9. The officer making such order shall direct notice of its contents to be given by personal service, or by mail, to each of the creditors.

SEC. 10. On the day specified in such order, or on any subsequent day that the officer before whom cause is required to be shown, may appoint, the said officer shall proceed to hear the proofs and allegations of the parties; and before any other proceedings be had, shall require proof of the service of the notice as herein directed.

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Hearing; proof
of service of no-
tice.

6 Wend., 632.

Demand of hear-
ing by jury.

SEC. 11. Every creditor opposing the discharge of an insolvent under this chapter, may, at the time appointed for the first hearing, demand of the officer before whom such hearing shall be had, that the case of such insolvent be heard and determined by a jury; and shall be entitled to an order to that effect, upon filing with such officer a specification in writing, of the grounds of his objection to such discharge.

SEC. 12. Upon such demand being made, and such specification filed, a jury of six competent persons shall be selected in the same manner as is provided in cases of forcible entry or detainer, and the officer shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the persons so selected, to appear before such officer, at a time and place to be specified in the summons, not less than six nor more than twelve days from the time of issuing the same.

Jury how selec-
ted and summon-
ed.

SEC. 13. At the time and place so appointed, the persons so selected and appearing, or in case any of them fail to appear, such others as may be summoned in their places, shall be sworn by such officer, well and truly to hear, try, and determine the validity of the objections so specified.

Jury to be sworn.

SEC. 14. Such jury so selected and sworn, shall hear the proofs and allegations of the parties, and determine the matter submitted to them, and for that purpose shall be kept together by the sheriff or a constable, who shall be sworn as is usual in like cases in courts of record, until they shall have agreed on their verdict; and such verdict shall be conclusive in the premises, and shall be recorded by the officer in the minutes of the proceedings.

Hearing before
jury. Verdict to
be recorded.

SEC. 15. There shall be but one hearing before a jury in any case under this chapter; and if such jury cannot agree, after being kept together for such time as the officer before whom the proceedings shall be had, shall think reasonable, then they shall be discharged, and such officer shall decide upon the merits of the case as if no jury had been called.

Proceedings if ju-
ry cannot agree

SEC. 16. At the hearing of such petition before a jury or otherwise, the insolvent may be examined on oath at the instance of any creditor, touching his estate or debts, or any matter stated in his schedule, and may be required to state any changes that have occurred in the situation of his property, since the making of such schedule, and particularly whether he has collected any debts or made any transfer of his real or personal estate; but nothing contained in this section shall prevent any creditor from contradicting or impeaching by other competent testimony, any evidence given by such insolvent.

Examination of
insolvent on
hearing.

SEC. 17. If it shall appear on such examination or otherwise, by competent proof, that such insolvent has collected any debts or demands, or made any transfer, absolute, conditional, or otherwise, of any part of his real or personal estate, since the making of the schedule annexed to his petition, he shall be required to pay forthwith to the officer before whom the hearing shall be had, the full amount of all debts and demands so by him collected or received, and the full

Certain pay-
ments to be made
or security given.

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value of all the property so by him transferred, except such parts of the said property as shall appear to have been necessarily expended by such insolvent for the support of himself or his family, and no discharge shall be granted him under the provisions of this chapter until such payment be made, or security satisfactory to the officer be given, that such payment shall be made within thirty days thereafter, to the assignees of such insolvent.

Insolvent having preferred creditors not entitled to discharge.
7 Wend., 240.

SEC. 18. If it shall appear on such hearing, on the examination of the insolvent or otherwise, that in contemplation of his becoming insolvent, or of his petitioning for a discharge under the provisions of this chapter, or knowing of his insolvency, such insolvent has made any assignment, sale or transfer, either absolute or conditional, of any of his estate, real or personal, or of any interest therein, or has confessed any judgment or given any security, with a view to give a preference for an antecedent debt to any creditor, he shall not be entitled to a discharge under this chapter.

When assignment to be ordered, articles excepted.
13 J. R., 385.

SEC. 19. If it shall satisfactorily appear to the officer before whom such application is pending, in cases where no jury has been required, or the jury have disagreed, that the insolvent is justly and truly indebted to the petitioning creditors in the sums by them respectively mentioned in their affidavits, that such sums amount in the aggregate to two-thirds of all the debts that were owing by such insolvent at the time of presenting his petition, to creditors residing within the United States; that such insolvent has honestly and fairly given a true account of his estate, and has in all things conformed to the matters required of him in this chapter; the officer before whom the application shall be pending shall direct an assignment of all such insolvent's estate, both in law and equity, in possession, reversion, or remainder, excepting from the articles mentioned in his inventory, such as are exempt by law from sale under execution.

Finding of a jury conclusive.

SEC. 20. When any of the matters in the last section required to be established previous to granting an order of assignment, shall have been submitted to a jury as herein provided, and shall have been found in favor of the insolvent, such finding shall be conclusive as to such matters, upon the officer before whom such proceeding (*proceedings*) are pending, and the officer shall direct an assignment accordingly.

Assignment to whom to be made.

SEC. 21. Such assignment shall be made to the person or persons who shall have been nominated as assignee or assignees, by such of the petitioning creditors as shall have owing to them a major part of the debts, constituting the two-thirds as herein required, and in case no assignee or assignees shall be nominated by such petitioning creditors, the assignment shall be made to such person or persons as such officer shall direct.

Effect of assignment.

SEC. 22. Such assignment shall vest in the assignees all the interest of such insolvent at the time of executing the same, in any estate or property, real or personal, whether such interest be legal or equitable; and in case of any contingent interest existing at the time of said assignment, becoming vested at any time thereafter, it shall pass to the assignees in the same manner as it would have vested in such insolvent if no assignment had been made by him.

Upon producing certificate, discharge to be granted.

SEC. 23. Upon such insolvent producing a certificate under the hands of the assignees, executed in the presence of such officer, or of two witnesses, and proved by the affidavit of one of them, stating

that such insolvent has assigned and delivered to them for the use of his creditors, all his estate so directed to be assigned, and all the books, vouchers and securities relating to the same, and upon his also producing a certificate of the register of deeds of the county, that such assignment has been duly recorded in his office, the officer who directed such assignment, shall grant to such insolvent a discharge from his debts, and from imprisonment, which shall have the effect declared in the succeeding sections of this chapter.

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SEC. 24. No proceedings to be had under the provisions of this chapter, shall discharge any insolvent from any debt or demand contracted previous to the first day of September, in the year one thousand eight hundred and thirty-eight, unless the creditor having such demand shall unite in the petition for such discharge, or unless the creditor shall accept a dividend from the insolvent estate.

Effect of discharge on certain debts.
2 Wend., 457.
12 do. 102.
3 Paige, 338.

SEC. 25. A discharge granted under the provisions of this chapter, shall discharge and exonerate such insolvent from all debts due at the time of the assignment, or contracted for before that time, though payable afterwards, founded upon contracts made after the thirty-first day of August, in the year one thousand eight hundred and thirty-eight, within this state, or to be executed in this state, and from all debts whatever, owing to any person who united in the petition for such discharge, or who shall have accepted a dividend from the estate of such insolvent; and from all liabilities incurred by such insolvent, by making or endorsing any promissory note or bill of exchange, after the day last mentioned, and before the execution of his assignment, or incurred by him in consequence of the payment, by any party to such note or bill, of the whole or any part of the money secured thereby, whether such payment be made prior or subsequent to the execution of the assignment by such insolvent.

Effect as to certain contracts.

SEC. 26. In any action which shall be brought against such insolvent, upon any debt, demand or liability, from which such insolvent shall have been discharged according to the foregoing provisions, such insolvent may plead the general issue, and give notice of such discharge in bar thereof.

Notice of discharge in bar of action.

SEC. 27. Every such discharge shall exonerate the insolvent to whom it is granted, from any arrest or imprisonment thereafter, in any suit or in any proceeding, founded upon any such debt, demand or liability from which such insolvent shall have been discharged according to the foregoing provisions.

Discharge to exonerate insolvent from arrest.

SEC. 28. If such insolvent be in prison in any suit or proceeding founded upon any contract or liability, in which he is exempted from imprisonment, according to the provisions of the last section, he shall be discharged therefrom upon producing the discharge granted pursuant to the provisions of this chapter.

Insolvent to be liberated if imprisoned.

SEC. 29. Every discharge granted to an insolvent under this chapter, shall be void in each of the following cases :

When discharge to be void.
1 Wend., 156.
3 do. 344.

1. If such insolvent shall have wilfully sworn falsely, in his affidavit annexed to his petition, or upon his examination, in relation to any material fact concerning his estate or his debts, or any other material fact :

2. If, after the presentation of his petition, he shall sell, or in any way transfer or assign any of his property, or collect any debt due him, and shall not give a just and true account thereof on the hearing of his application; and shall not also pay or secure the payment of

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the money so collected, or the value of the property so assigned, as hereinbefore directed :

3. If he shall secrete any part of his estate, or any book or writings relative thereto, with intent to defraud his creditors :

4. If he shall fraudulently conceal the name of any of his creditors, or the amount of any sum due to them :

5. If, in order to obtain his discharge, he shall procure any person to become a petitioning creditor for any sum not due from him to such person in good faith :

6. If he shall pay, or consent to the payment of any portion of the debt or demand of any of his creditors, or shall grant or consent to the granting of any gift or reward to any such creditor, upon any express or implied contract or trust, that the creditor so paid or rewarded shall become a petitioner in behalf of such insolvent, or that he should abstain or desist from opposing the discharge of such insolvent : or,

7. If he shall be guilty of any fraud whatever, contrary to the true intent of this chapter.

CHAPTER 143.

OF THE RELIEF OF INSOLVENT DEBTORS FROM IMPRISONMENT.

Petition of insolvent debtor.

SECTION 1. Every insolvent debtor may present a petition to any of the officers mentioned in the sixth section of the last preceding chapter, praying that his estate may be assigned for the benefit of all his creditors, and that his person may thereafter be exempted from arrest or imprisonment, by reason of any debts arising upon contracts previously made, or of any judgments existing against him in civil cases, and if in prison, that he may be discharged from his imprisonment.

Schedule and affidavit.

SEC. 2. On presenting such petition, the insolvent shall deliver therewith a schedule containing an account of his creditors, and an inventory of his estate, similar in all respects to the account and inventory required by the last preceding chapter ; and shall annex to the said petition and schedule an affidavit, which shall be taken and subscribed by him, before the officer to whom such petition is presented ; and shall be certified by such officer, in the form following :

“I, ———, do swear, (or affirm as the case may be,) that the account of my creditors, with the places of their residence, and the inventory of my estate, with the evidences of my title thereto, which are herewith presented, are in all respects just and true, and that I have not at any time, or in any manner whatsoever, disposed of, or made over any part of my estate, for the future benefit of myself or my family, or in order to defraud any of my creditors, and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view that they or any of them should abstain or desist from opposing my discharge.”

Order to show cause.

SEC. 3. Upon receiving such petition, schedule and affidavit, the officer shall make an order requiring the creditors of such insolvent to show cause before the said officer, at a time and place to be speci-

fied in the order, why the prayer of the petitioner should not be granted.

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Notice of order.

SEC. 4. Notice of the contents of such order, shall be given as directed in the last preceding chapter, respecting notices upon the application of an insolvent in conjunction with his creditors.

SEC. 5. Every creditor opposing the discharge under this chapter, may demand a jury to determine upon the matter; and shall be entitled thereto, on filing with the officer to whom the petition was presented, at or before the first hearing on such petition, a specification in writing, of the grounds of his objection.

Demand of a jury.

SEC. 6. The same proceedings shall be had for selecting, summoning and impanneling a jury, who shall hear the proofs and allegations of the parties, and render their verdict in the same manner, and with like effect, as prescribed in the last preceding chapter; and the jury may be discharged in the same case therein specified; and in such case, the officer before whom the proceedings shall be had, shall in like manner decide upon the application.

Proceedings.

SEC. 7. The petitioner may be examined before the jury or officer, in the same manner as prescribed in the last preceding chapter; and may in like manner be required to pay or secure the payment of any debt collected by him, or the value of any property assigned by him after the presentation of his petition, excepting such as shall appear to have been necessarily expended in support of himself and his family; and if it shall appear that he has preferred any creditor as in the said chapter specified, he shall in like manner be precluded from obtaining any discharge under the provisions of this chapter.

Debtor may be examined, &c.

SEC. 8. If the jury shall find in favor of the petitioner, or in case of their disagreement, or of no jury being required, if the officer before whom the hearing is had shall be satisfied that such petitioner is unable to pay his debts, that his account and inventory presented with his petition are true, that he has not been guilty of any fraud or concealment in violation of the provisions of this chapter, but has in all things conformed thereto; in either case, such officer shall direct an assignment to be made to such assignee or assignees as such officer shall appoint, of all the estate of such debtor, excepting such articles as are exempt from sale on execution.

When assignment to be directed.

SEC. 9. The insolvent shall execute an assignment with the like effect as declared in the last preceding chapter, respecting the assignment of a debtor petitioning in conjunction with his creditors, and cause the same to be recorded in like manner.

Assignment to be executed and recorded.

SEC. 10. Upon producing and proving a certificate of the assignees, and of the register of deeds, as prescribed in the last preceding chapter, of the execution and recording of such assignment, and of the delivery of the property assigned, or so much as shall be capable of delivery, with the books and papers relating to the same, the officer before whom the proceedings were had shall grant a discharge under his hand and seal.

Discharge when to be granted.

SEC. 11. Such discharge shall declare, and such shall be its effect, that the person of such insolvent shall forever thereafter be exempted from imprisonment, by reason of any debt due at the time of his making such assignment, or contracted for before that time, though payable afterwards, or of any judgment in any civil suit existing against him at the time of such assignment, and by reason of any liabilities incurred by him by making or endorsing any promissory note or bill of

Terms and effect of discharge.
1 Paige, 301.

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exchange; or incurred by him in consequence of the payment, by any party to such note or bill, of the whole or any part of the money secured thereby, whether such payment be made prior or subsequent to the execution of his assignment.

For what causes discharge shall not exempt person from imprisonment. SEC. 12. But such discharge shall not exempt the person to whom it is granted from arrest or imprisonment for any of the causes specified in the fourth section of chapter one hundred and forty-one of these revised statutes, if such cause shall occur at any time after the granting of such discharge.

Insolvent to be discharged from imprisonment. SEC. 13. If such insolvent be in prison in any suit or proceeding, founded upon any contract or liability, as to which he is exempted from imprisonment according to the preceding provisions, he shall be discharged therefrom on producing his discharge granted pursuant to the provisions of this chapter.

Debts not affected by discharge. SEC. 14. No debt, demand, judgment, or decree against any insolvent discharged under this chapter, shall be affected or impaired by such discharge, but shall remain valid and effectual against all the property of such insolvent acquired after execution of his assignment.

Discharge when void. SEC. 15. Every discharge granted to an insolvent under this chapter, shall be void in the same cases, so far as they are applicable, in which a discharge granted under the last preceding chapter is therein declared to be void.

CHAPTER 144.

**GENERAL PROVISIONS APPLICABLE TO PROCEEDINGS UNDER THE TWO
LAST PRECEDING CHAPTERS.**

Residence of officer. SECTION 1. Application under the two last preceding chapters shall be made to an officer residing in the county in which the petitioning debtor resides, or is imprisoned; and proof of such residence or imprisonment shall be made at the time of presenting the petition, and before any order shall be granted thereon.

Discharge void if obtained by collusion. SEC. 2. When the petitioning debtor shall, by any collusion with any prosecuting creditor, procure himself to be imprisoned in a county different from that of his residence, for the purpose of obtaining a discharge, a discharge granted in such county where the applicant is imprisoned by collusion, shall be void; and if such collusion shall be proved on the hearing, it shall defeat the application.

When application may be made to officer of another county. SEC. 3. If there be no officer authorized to receive the petition of any such debtor, residing within such county, and not interested as creditor or otherwise, to whom such application can be made, then the application may be made to any such officer residing in any other county; but no place shall be appointed for the hearing on any application, out of the county in which the petitioning debtor resides or is imprisoned.

Proceedings how continued in case of death &c., of officer. SEC. 4. In case of the death, sickness, resignation, removal from office, absence from the county of his residence, or other disability of any officer, before whom any proceedings may have been commenced under the provisions of either of the two last preceding chapters, the

said proceedings may be continued by his successor in office, or by any other officer residing in the same county, before whom such proceedings might have been originally commenced, in the same manner, and with the like effect, as if originally commenced before him.

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SEC. 5. A corporation shall be deemed a creditor within the meaning of the provisions of this title, and may present or unite in any petition as other creditors; and any such petition may be signed by a director or other officer of the corporation, thereto duly authorized under its common seal; and any affidavit required of creditors, may be made and signed by such director or officer.

Corporations
deemed creditors
&c.

SEC. 6. Whenever partners or joint companies are creditors of any debtor, any petition, and any affidavit required by the provisions of this title, of creditors, may be made and signed by either of the partners, or any one of such company.

Partners and
joint companies.

SEC. 7. Creditors residing out of this state, and within the United States, may unite in any petition, in the same manner as resident creditors; and they shall annex to every such petition the original accounts, or sworn copies thereof, and the original specialties or written securities, if any, on which their demands arise or depend.

Creditors resi-
ding out of state
may petition, &c.

SEC. 8. Whenever a petitioning creditor shall have purchased, or procured to be assigned to him, any debt or demand against the insolvent debtor, for less than the nominal amount of such debt or demand, and whenever any executor or administrator shall petition, the person petitioning shall be deemed a creditor, to the amount only of the sum or value, actually and in good faith paid by him or his testator or intestate for such debt or demand.

Debts purchased
for less than their
nominal amount.

SEC. 9. Whenever a petitioning creditor shall have in his own name or in trust for him, any mortgage or other security, or assignment by way of security, for securing the payment of any sum of money, upon any real or personal estate of the debtor, in respect to whose estate he is a petitioner, he shall not become a petitioner in respect to the debt so secured, unless he shall add to his signature to the petition, a declaration in writing, that he relinquishes to the assignees who shall be appointed pursuant to such petition, every such mortgage or other security, for the benefit of all the creditors of such debtor, which declaration shall operate as an assignment of such mortgage or other security to the assignees, and vest in them all the rights and interests of such petitioning creditor therein.

Creditors having
security.

SEC. 10. Every creditor who shall swear, in any proceedings under this title, that any sum of money is due to him from any debtor, which is not really due, or that more is due than the sum really due, knowing the same not to be due, shall be liable to the assignees of such debtor in double the sum so falsely sworn to be due, to be recovered by such assignees.

Liability of cred-
itors swearing
falsely.

SEC. 11. On the hearing of any petition for the discharge of any debtor, the officer before whom the same may be pending, may adjourn the same from time to time, and may issue a subpoena, requiring any person, whether an opposing creditor or not, to appear and testify concerning the matters pending before him; and the debtor, his wife, and any creditor may, in all cases, be examined at the instance of any creditor.

Hearing may be
adjourned, debt-
or, &c. may be
examined.

SEC. 12. The appearance of any person duly subpoenaed, and neglecting or refusing to appear, may be enforced by attachment to be issued by such officer; and if, after appearing, any such person shall refuse to testify, he shall be committed to prison until he submit.

Appearance of
witness how en-
forced, and how
compelled to tes-
tify.

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Liability of witness for damages.

Officer to keep minutes of testimony.

Liability of juror neglecting to attend.

Fees of sheriff, &c.

Discharge to be recorded; evidence.

Assignments to be recorded; evidence.

Insolvent arrested after discharge how to proceed.

Causes which may be shown against discharge.

Assignees refusing to sign certificate to be cited, &c.

When insolvent may be discharged notwithstanding refusal.

SEC. 13. Every person wilfully disobeying such subpoena, shall be liable to the party at whose instance he was subpoenaed, in the sum of one hundred dollars damages, besides the actual damages which such party may prove.

SEC. 14. Whenever any hearing shall be had before any officer singly, or before him and a jury, it shall be the duty of such officer to keep minutes of all the material facts of the testimony delivered before him, and of the examination of any debtor.

SEC. 15. Every person who shall be summoned as a juror, and shall refuse or neglect to attend, without reasonable cause, to be determined by the officer issuing the summons, shall be liable to any creditor at whose instance such summons was issued, in the sum of ten dollars damages.

SEC. 16. The sheriff or constable summoning a jury, shall be entitled to receive one dollar and twenty-five cents, and each juror attending and sworn, twenty-five cents, and the said fees, together with all other expenses of the hearing of any case by a jury, shall be paid by the creditor requiring the same.

SEC. 17. Every discharge granted under the provisions of either of the two last preceding chapters, shall be recorded by the register of deeds of the county in which it was granted, and the original discharge, the record thereof, or a transcript of such record duly authenticated, shall be evidence of the proceedings and facts therein contained.

SEC. 18. Every assignment made in pursuance of either of the two last preceding chapters, shall also be recorded by the register of deeds of the county in which it was executed, upon being acknowledged or proved in the same manner as deeds of real estate; and such original assignments, the record thereof, or a duly authenticated transcript of such record, shall be received in evidence in the same manner, and with the like effect, as deeds of real estate duly recorded.

SEC. 19. If any debtor, discharged under either of the two last preceding chapters, shall be arrested on original process, in a suit upon any debt or liability in which he is exempted from imprisonment by virtue of such discharge, and shall apply to any officer to discharge him from such arrest, such officer shall cause reasonable notice to be given to the plaintiff or his attorney in such suit, to show cause why such debtor should not be discharged from such arrest.

SEC. 20. The plaintiff in such suit may show as cause against such discharge, any fraud committed by such debtor in obtaining his discharge, or any cause for avoiding such discharge, declared in the two last preceding chapters, and such officer may require such debtor to be held to bail in such process, as if no discharge had been granted.

SEC. 21. Whenever an assignment shall have been executed to one or more assignees, and they, or any of them shall refuse to sign a certificate of the fact that such assignment has been executed, upon complaint made to the officer who directed the assignment, the assignee so refusing shall be cited to appear, and the matter shall be investigated.

SEC. 22. If it shall appear that such assignment has been duly executed, and that such debtor has delivered all his estate directed to be assigned, and all the books, vouchers and securities relating to the same, capable of delivery, such officer may grant a discharge to the

debtor, notwithstanding the refusal of the assignees to certify the fact of an assignment.

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SEC. 23. Or, in such case, the officer may revoke the appointment of assignees, and grant a certificate of such revocation, which shall be recorded in the office of the register of deeds of the county; and thereupon the assignment that may have been previously executed to the assignees so refusing to certify, shall be void.

Or appointment of assignees may be revoked.

SEC. 24. The officer shall thereupon direct a new assignment to be made to such persons as shall be appointed for that purpose; and in case of such new assignment being executed, the certificate of the assignees to the fact, shall be required in the same manner as of the first assignees.

And new assignment directed.

SEC. 25. All proceedings under the said two last preceding chapters, shall be filed by the officer before whom the same shall be consummated, within one month thereafter, with the clerk of the circuit court for the county in which such officer resides.

Proceedings to be filed with clerk.

SEC. 26. No debt or duty to the United States shall be in any way affected by such discharge; nor can any debtor of the United States be exonerated by such discharge from imprisonment in any suit or proceeding founded upon a debt to the United States.

Debts, &c. to U. S. not affected.

SEC. 27. All debts and duties to this state, except taxes, shall be affected by such discharge, in the same manner as debts to individuals; and debtors may be discharged and exonerated from imprisonment, in suits brought in the name of the people of this state, in the same manner as in suits by individuals; and in such cases, whenever it shall be necessary to serve any notice upon plaintiffs, according to the provisions of this title, the same may be served on the attorney general, who shall in all proceedings under this title, represent the people of this state.

What debts, &c., to this state, embraced in this title.

CHAPTER 145.

OF THE POWERS, DUTIES AND OBLIGATIONS OF ASSIGNEES OF INSOLVENT DEBTORS UNDER THIS TITLE.

SECTION 1. All assignees appointed under the provisions of this title, are hereby declared to be trustees of the estate of the debtor, in relation to whose property they shall be appointed, for the benefit of his creditors, and shall be vested with all the powers and authority hereinafter specified, and shall be subject to the control, obligations and responsibilities hereinafter declared.

Assignees declared trustees for benefit of creditors.

SEC. 2. When one assignee only shall be appointed, all the provisions herein contained in reference to several assignees, shall apply to him.

One assignee.

SEC. 3. When more than one assignee shall be appointed, the debts and property of the debtor may be collected and received by one of them; and when there are more than two assignees, every power and authority of the whole, may be exercised by any two of them.

Powers when more than one.

SEC. 4. The survivor or survivors of any assignees, shall have all the powers and rights given to such assignees; and all property in

Surviving assignee, &c.

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the hands of any assignee at the time of his death, removal or incapacity, shall be delivered to the remaining assignee or assignees, if there be any; or to the successor of the one so dying, removed or incapacitated, who may demand and sue for the same.

**Oath to be taken
by assignees.**

SEC. 5. Before proceeding to the discharge of any of their duties, all such assignees shall take and subscribe an oath that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the officer who appointed them.

**Assignees vested
with estate.**

SEC. 6. The assignees taking such oath, shall be deemed vested with all the estate, real and personal, of such debtor, except such as is exempted from sale on execution, from and after the execution of the assignment.

**Powers of assign-
ees.**

SEC. 7. The said assignees shall have power,

1. To sue in their own names or otherwise, and recover all the estate, debts and things in action, belonging or due to such debtor, in the manner and with the like effect as such debtor might or could have done, if no assignee had been appointed, or an assignment had not been made; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor by such debtor, before the publication of notice to creditors to show cause why the insolvent should not be discharged; but no suit in chancery shall be brought by the assignees, without the consent of the creditors having a major part of the debts which have been exhibited and allowed, unless the same exceed five hundred dollars:

2. To take into their hands all the estate of such debtor, whether delivered to them or afterwards discovered; and all books, vouchers and securities relating to the same:

3. From time to time to sell at public auction, all the estate vested in them, which shall come to their hands, giving at least fourteen days' notice of the time and place of sale, and also publishing the same for three weeks in a newspaper printed in the county where the sale shall be made, if there be one:

4. To allow such credit on the sale of real property by them, as they shall deem reasonable, not exceeding one year, for not more than three-fourths of the purchase money, which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold:

5. On such sales to execute the necessary conveyances and bills of sale:

6. To redeem all mortgages and conditional contracts, or other incumbrances, and all pledges of personal property; or to sell such property subject to such incumbrances, contract or pledges:

7. To settle all matters and accounts between such debtor and his debtors and creditors, and to examine any person touching such matters and accounts, on oath to be administered by either of them: and,

8. Under the order of the officer appointing them, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person.

**Notice to be giv-
en by assignees.**

SEC. 8. The assignees, immediately upon their appointment, shall give notice thereof, and therein shall require as follows:

1. All persons indebted to such debtor, by a day and at a place therein to be specified, to render an account of all debts and sums of

money owing by them respectively, to such assignees, and to pay the same :

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2. All persons having in their possession any property or effects of such debtor, to deliver the same to the said assignees by the day so appointed : and,

3. All the creditors of such debtor to deliver their respective accounts and demands to the assignees, or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

SEC. 9. Notwithstanding any such notice, the assignees may sue for and recover any property or effects of the debtor, and any debts due to him, at any time before the day appointed for the delivery or payment thereof.

May sue notwithstanding notice.

SEC. 10. Every person indebted to such debtor, or having the possession or custody of any property or thing in action belonging to him, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or things in action to the assignees, or one of them, by the day for that purpose appointed, shall be liable to the assignees in double the amount of such debt, or double the value of the property or things in action so concealed.

Liability of persons concealing property, &c.

SEC. 11. Whenever the assignees shall show by their own oath, or by other competent proof, to the satisfaction of any officer authorized to direct an assignment of an insolvent's estate, that there is good reason to believe that the debtor, his wife, or any other person, has concealed or embezzled any part of the estate of such debtor, invested (*vested*) in the said assignees, or that any person can testify concerning the concealment or embezzlement thereof, or that any person who shall have not rendered an account as above required, is indebted to said creditor, (*debtor*,) or has property in his custody or possession belonging to said creditor, (*debtor*,) such officer shall issue a warrant, commanding any sheriff or constable to cause such debtor or other person to be brought before him at such time and place as he shall appoint for the purpose of being examined.

Proceedings in case of concealment or embezzlement of property, &c.

SEC. 12. The officer issuing such warrant shall examine every person so brought before him, on oath, in the presence of the assignees or any of them, touching all matters relative to the debtor, his dealings and estate, and touching the detention or concealment of any part of his property, and touching the indebtedness of any person to such debtor ; and shall reduce the examination to writing, which the person so examined shall sign, and which shall be attested by the officer.

Examination.

SEC. 13. If any person brought before such officer, shall refuse to be sworn or to answer satisfactorily all lawful questions put to him, or shall refuse to sign the examination, not having a reasonable objection thereto, to be allowed by such officer, the officer shall by warrant commit such person to prison, there to remain without bail until he shall submit to be sworn, or to answer as required, or to sign such examination ; in which warrant the particular default of the person committed shall be specified, and if it be in not answering any question, such question shall also be specified therein.

Person refusing to be sworn, &c to be committed

SEC. 14. If any person so committed shall bring a writ of habeas corpus or certiorari, he shall not be discharged by reason of any insufficiency in the form of a warrant of commitment, but the court or officer before whom such person shall be brought, shall re-commit

Proceedings in case of habeas corpus, &c.

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such person, unless it shall be made to appear that he hath answered all lawful questions put to him, or had sufficient reason to refuse to sign the examination, as the case may be, or unless such person shall then answer on oath the questions put to him.

Liability of sher-
iffs for escape.

SEC. 15. Any sheriff or jailor wilfully suffering any person so committed, or re-committed, pursuant to the foregoing sections, to escape, shall be liable to indictment for misdemeanor, and on conviction thereof, in addition to any punishment the court may inflict, shall be liable to the assignees in a sum equal to the whole amount of the debts due to the creditors of such debtor, not exceeding two thousand dollars.

Person answer-
ing how far lia-
ble; effect of ex-
amination.

SEC. 16. The person so examined and answering to the satisfaction of the officer, shall not be subject to any liability imposed by this chapter for concealing and not delivering any property, or paying any debts beyond the value of such property, or the amount of such debts; but his answers on such examination may be given in evidence in the same manner, and with the like effect, as if they had been made in answer to a bill in chancery filed by such assignees.

Persons discover-
ing effects, &c.,
entitled to pre-
mium.

SEC. 17. Any person who shall discover to the assignees any secreted effects, property or things in action, belonging to such debtor, so that they shall be recovered by them, shall be entitled to ten per cent. on the value of the effects so discovered, to be paid by the assignees out of the estate of such debtor; but this section shall not extend to persons who have such property, effects or things in their possession.

Reference of
controversy.

SEC. 18. If any controversy shall arise between the assignees and any other person in the settlement of any demands against such debtor, or of any debts due to his estate, the same may be referred to three disinterested persons, who may be agreed upon by the assignees, and the party with whom the controversy shall exist, by a writing to that effect, signed by them.

Notice of appli-
cation for ap-
pointment of ref-
erees.

SEC. 19. If such referees be not selected by agreement, then the assignees may serve a notice on the other party, of their intention to apply to the officer who appointed them, or to any other officer of like authority, residing in the same county, for the appointment of referees, specifying the time and place when and where such application will be made; which notice shall be served at least ten days before the time so therein specified.

Referees how no-
minated.

SEC. 20. On the day so specified, the assignees may nominate two persons, not being creditors of such debtor, or otherwise interested, and the other party to such controversy, or in case of his absence, or refusal, the said officer, on due proof of the service of such notice, in place of such party, shall nominate two disinterested persons.

How selected.

SEC. 21. The names of the persons thus nominated, shall be written on four pieces of paper, as nearly alike in all respects as may be, which shall be rolled up separately and put into a box, and from thence the said officer shall draw out three of them, and the persons whose names are so drawn shall be referees to determine the controversy.

Selection to be
certified and rule
entered.

SEC. 22. The officer before whom they shall be selected, shall certify such selection in writing; and such certificate, or the written agreement of the parties, shall be filed by the assignees with the clerk of the circuit court for the county, and a rule shall thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

SEC. 23. Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by a circuit court, in personal actions depending therein.

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Powers, duties,
&c., of referees.

SEC. 24. The report of the referees shall be filed in the same office where the rule for their appointment was entered, and shall be conclusive on the right of the parties, if not set aside by the court.

Report, where to be filed; its effect.

SEC. 25. The assignees shall, as speedily as practicable, convert the estate, real and personal, into money; and they shall keep a regular account of all moneys received by them, to which account, every creditor or other person interested therein, shall be at liberty at all times to have access.

Assignees to convert estate into money; to keep account, &c.

SEC. 26. The assignees, within fifteen months from the time of their appointment, shall call a general meeting of the creditors of such debtors (*debtor*), by a notice to be published in the same manner as hereinbefore directed respecting the publication of the notice of their appointment; in which notice they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice; and every such notice shall be published at least once in each week, until the time of such meeting.

When and how general meeting of creditors to be called.

SEC. 27. At such meeting, or at any adjourned meeting thereafter, all accounts and demands, in favor of and against the estate of such debtor, shall be fairly adjusted, as far as the same can be ascertained, and the amount of moneys in the hands of the assignees declared.

Proceedings at meeting.

SEC. 28. Out of the moneys in their hands, the assignees shall first deduct all the necessary disbursements made by them in the discharge of their duty, and a commission at the rate of five per cent. on the whole sum, which shall have come into their hands.

Disbursements and commissions.
12 Wend., 280.

SEC. 29. They shall pay all debts due by such debtor to the United States, and all debts due by him to persons who, by the laws of the United States, have a preference in consequence of having paid money as sureties of such debtor.

What debts to be first paid.

SEC. 30. They shall distribute the residue of the moneys in their hands, among all those who were creditors at the time of executing the assignment by the insolvent who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, in proportion to their respective demands, and without giving any preference to debts due on specialties.

Distribution of residue.

SEC. 31. In making such distribution the assignees shall first pay all debts that may be owing by the debtor as guardian, executor, administrator or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them in proportion to their amounts respectively.

Debts due from debtor as guardian, &c.

SEC. 32. Every person to whom a debtor shall be indebted for a valuable consideration, in any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed for the time unexpired of such credit.

Creditors whose debts are not due.

SEC. 33. When mutual credit has been given by any debtor, and any other person, or mutual debts have subsisted between such debtor and any other person, the assignees may set off such credits or debts and pay the proportion or receive the balance due; but no set off shall be allowed of any claim or debt which would not have been entitled to a dividend as herein before directed.

Mutual credits, &c., when set-off.

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Set-offs of demands purchased.

Proportion may be retained in case of suits pending.

Fines recovered by assignees to be distributed.

Second and other dividends.

Creditors omitting to deliver accounts on first dividend, &c.

Unclaimed dividends.

Surplus to be paid to debtor.

Assignees to render account on oath, and file same with clerk.

Assignees subject to order of circuit court, and may be removed.

SEC. 34. No set off shall be allowed by the assignees of any claim or debt which shall have been purchased by, or transferred to the person claiming its allowance, which could not have been set off according to the provisions of this chapter, in a suit by the assignees.

SEC. 35. If at the time any dividend is made, any prosecution be pending against the assignees, in which a demand against such debtor may be established, the assignees may retain in their hands the proportion which would belong to such demand if established, and the necessary costs and expenses of such suit or proceeding, to be applied according to the event of such suit or proceeding, or to be distributed in a second or other dividend.

SEC. 36. All sums which shall be recovered by the assignees on account of any liability incurred pursuant to the provisions of this title, shall be deemed a part of the estate of the debtor, and shall be distributed as such among his creditors.

SEC. 37. If the whole of the estate of such debtor be not distributed on the first dividend, the assignees shall, within one year thereafter, make a second dividend of all the moneys belonging to the estate of the debtor, then in their hands, among the creditors thereof as herein before specified; and in the same manner from year to year, so long as any money belonging to the estate of such debtor shall remain in the hands of the assignees, they shall make a dividend thereof among the creditors entitled thereto.

SEC. 38. Any creditor who shall have neglected to deliver to the assignees an account of his demand, before the first, second or other dividend, and who shall deliver such account to them before the second or other subsequent dividend, shall receive the sum he would have been entitled to on any former dividend, before any distribution be made to the other creditors.

SEC. 39. If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto, for one year after the same was declared, the assignees shall consider it relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

SEC. 40. If, after settling the estate of any debtor, and after discharging his debts to creditors entitled to a dividend, any surplus shall remain in the hands of the assignees, the same shall be paid to such debtor or his legal representatives.

SEC. 41. Within ten days after any dividend made by any assignees, they shall render on oath, and file with the clerk of the circuit court for the county in which they reside, an account in writing of all their proceedings in the premises, stating,

1. Their disbursements, commissions, and the dividends made by them :

2. The names and residences of the creditors to whom dividends were made, and the names of those actually receiving them : and,

3. The property, moneys and effects of the debtor, remaining in their hands, and the value and situation of such property, and such assignees may at any time be compelled by a rule of such circuit court, to render such account on oath, on the application of the debtor or any creditor.

SEC. 42. Such assignees shall be subject to the order of the circuit court for the county in which they reside, upon the application of any creditor, or of any debtor in respect to whom they were appoint-

ed, in relation to the execution of any of the powers and duties confided to them, and they may be removed by such court for cause shown.

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SEC. 43. Whenever any assignee shall be removed or shall die, or become incapacitated to perform his duties, the officer who originally appointed such assignee, or in case of his absence, death or removal, any other officer residing in the county where such assignee was resident, who by law would have been empowered to make such appointment, after giving notice, and an opportunity to the creditors to propose proper persons, may appoint another in the place of such assignee, who shall in all respects have the like powers and authority, and be subject to the same control, obligation (*obligations*) and responsibilities; and the said appointment shall be certified and recorded as the original appointment was required to be recorded.

If assignee be removed, &c., new assignee may be appointed.

SEC. 44. Any assignee who shall be desirous of renouncing the trust vested in him, may apply to the officer from whom his appointment was received for an order to allow all persons interested to show cause why such renunciation should not be accepted.

Assignee wishing to renounce may obtain order to show cause.

SEC. 45. If the officer who made the appointment shall not then be an officer, such application may be made to any other officer of the county having authority by law to appoint such assignee in the first instance.

When application may be made to other officer.

SEC. 46. Such application shall be accompanied by a full, true and just account of all the transactions of such assignee, in that character, and particularly of the property, moneys, and effects received by him; of all payments made, either to creditors or otherwise; and of the remaining estate and effects of the debtor, in respect to whose estate he was appointed an assignee, within his knowledge, and the situation of the same.

Application to be accompanied by statements.

SEC. 47. To such account shall be annexed the affidavit of the assignee, that the said account is in all respects, just and true, according to the best of his knowledge and belief; which affidavit shall be subscribed and sworn to before the officer to whom the application is made, and shall be certified by him.

Affidavit to be annexed.

SEC. 48. Such officer shall thereupon grant an order, directing notice to be given to all persons interested in the estate of the debtor in respect to whom such assignee was appointed, to show cause on a day and at a place therein to be specified, why he should not be permitted to renounce his appointment, and such notice shall be published once in each week, for six weeks successively, in the state paper, or such other newspaper or newspapers, as the officer shall direct.

Notice to be published.

SEC. 49. On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that the notice was duly published, the officer shall proceed to hear the proofs and allegations of the parties.

Hearing.

SEC. 50. If it shall appear that the proceedings of such assignee in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him, and if such officer shall be satisfied that for any reason, it is inexpedient for such assignee to continue in the execution of the duties of his appointment, and that such duties can be executed by another assignee without injury to the estate of the debtor, or to the creditors, and if no good cause to the contrary appear, such officer shall grant an order allow-

Order allowing assignee to renounce, &c., when to be granted.

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Assignee to execute assignment.

Effect of assignment; powers, &c., of new assignee.

When order to be made discharging assignee.

Assignee thereupon discharged, subject to prior liabilities.

New assignment to be recorded, and petition, &c., filed.

Expenses to be paid out of estate.

ing such assignee to renounce his appointment, and to assign the property and effects of the debtor.

SEC. 51. Such assignment shall be executed by the assignee, to such person or persons as the officer shall appoint for that purpose; and in such appointment such person as shall have been named to be assignee by the creditors, or by the major part of them, shall be preferred if approved by such officer.

SEC. 52. Such assignment shall transfer to the person to whom it shall be made, all the remaining estate and effects vested in the assignee so renouncing; and such new assignee shall have the same powers, be subject to the same duties, and be entitled to the same compensation as the original assignee, and shall continue any suit that may have been commenced by such original assignee in his name, or in that of such new assignee.

SEC. 53. Upon producing to the officer allowing such assignment, the certificate of the assignee, duly proved by the oath of a subscribing witness, that such assignment has been duly made, and the property capable of delivery, belonging to such estate, together with the books, vouchers and documents, relating to the said estate, have been duly delivered, and also a certificate of the register of deeds of the county that such assignment has been recorded; such officers (*officer*) shall grant to the assignee so applying an order that he be discharged from his trust.

SEC. 54. Upon such order being granted, such assignee shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease, but he shall, notwithstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

SEC. 55. Such new assignment, upon being duly proved or acknowledged, shall be recorded in the office of the register of deeds of the county where such order was granted; and the petition of the assignee, the affidavit and proceedings thereon, with the certificate of the new assignee, shall be filed in the same office where the original papers and proceedings in respect to such debtor were filed.

SEC. 56. The expense of all proceedings in effecting such renunciation and assignment, shall be paid out of the estate in the hands of the assignee making the application.

CHAPTER 146.

OF THE RELIEF OF POOR DEBTORS FROM IMPRISONMENT.

Persons imprisoned may apply for discharge.

Sheriff or jailor to notify officer.

SECTION 1. Every person who shall be imprisoned by virtue of one or more executions in civil causes, may make application for his discharge from imprisonment in the manner hereinafter specified.

SEC. 2. The person so entitled to apply for his discharge may represent to the jailor or sheriff in whose custody he shall be, that he is unable to pay the amount due on the execution or executions, by virtue of which he is imprisoned, and is desirous to take the benefit of the law for the relief of poor debtors, and thereupon such sheriff or

jailor shall make such desire known to a circuit court commissioner or judge of the circuit court for the same county.

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SEC. 3. The officer to whom such desire shall be so made known, shall thereupon appoint a time and place within the same county, for the examination of such debtor, and notice of such time and place shall be given to the plaintiff in every such execution or his attorney, if within the same or any adjoining county, at least three days before such examination.

Officer to appoint time and place for examination, and notice thereof to be given.

SEC. 4. If neither such plaintiffs nor their attorneys shall be found within either of such counties, such notice shall be published by posting the same upon the outer door of the jail in which such person is imprisoned, at least six days before such examination.

When and how notice to be published, &c.

SEC. 5. On the day appointed for such examination, the sheriff or jailor shall have the prisoner at the place designated by such officer; and on due proof of notice having been given as hereinbefore provided, such judge or commissioner shall examine the prisoner on oath concerning his estate and effects, and the disposal thereof, and his ability to pay the sum for which he is committed, or any part thereof, and shall hear any other legal and pertinent evidence that may be produced by the prisoner or any plaintiff in such execution.

Hearing before officer.

SEC. 6. If the officer before whom such examination is had, shall be satisfied of the truth of the facts set forth in the oath to be taken by the debtor, and in the certificate to be made by such officer, as required in the two following sections, he shall administer to such debtor the oath hereinafter prescribed.

When officer to administer oath.

SEC. 7. Such oath shall be in the following form: "I, ———, do solemnly swear, (or affirm, as the case may be,) that I have no estate, real or personal, to the amount of twenty dollars, except such goods and chattels as are by law exempt from execution, and that I have not any other estate, now conveyed or concealed, with design to secure the same to my use, or to the use of my family, or to defraud my creditors;" which oath shall be signed by the person making the same, and be certified by the officer.

Form of oath.

SEC. 8. After administering such oath, such officer shall make a certificate under his hand, in substance in the following form:

Form of certificate to be made by officer.

"County of _____, ss.

To the keeper of the jail of said county:

"I, the subscriber, judge of the county court, (or a circuit court commissioner, as the case may be,) for said county, do hereby certify that A. B., a poor prisoner, confined upon execution in a civil cause, in the jail of said county, has caused C. D., the person at whose suit he is imprisoned, to be notified according to law, of his desire to take the benefit of the law for the relief of poor debtors; that in my opinion the said A. B. has no estate, real or personal, to the amount of twenty dollars, except such goods and chattels as are by law exempt from execution, and has not any other estate now conveyed or concealed, or in any way disposed of with design to secure the same to his own use or the use of his family, or to defraud his creditors; and that I have, after due examination of the said A. B., administered to him the oath prescribed by law to be taken by poor prisoners, who are committed on execution in civil causes."

SEC. 9. The jailor, upon receiving such certificate, shall discharge the prisoner so far as he is held in prison on the execution or executions therein mentioned, and such certificate, and the oath taken by

Prisoner to be discharged, and oath and certificate filed.

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When prisoner
to be remanded,
&c.

such prisoner shall be filed and preserved in the office of the clerk of the county in which the proceedings were had.

SEC. 10. If the officer to whom any application shall be made under the provisions of this chapter, after the examination of the prisoner, shall not be satisfied that he is entitled to his discharge, such prisoner shall be remanded to prison; but he shall not thereby be prevented from obtaining his discharge upon new notice to the creditor or creditors, and new proceedings before the same or some other proper officer in the manner herein provided.

Debtor discharged
to be forever
exempted, unless
&c.

SEC. 11. The debtor, after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, and shall be discharged from such debt, unless he shall be convicted of having sworn falsely upon his examination before the officer, or in taking the oath before prescribed.

Consequences if
debtor convicted
of perjury.

SEC. 12. If he shall be so convicted, he shall have no benefit from the proceedings had under this chapter, and shall be liable to the punishment of perjury; and the creditor or creditors may have new executions against the body, or against the goods and chattels, lands and tenements of the debtor, in like manner as if he had not been committed on execution.

TITLE XXVIII.

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CHAPTER 147.

OF ADMITTING PRISONERS TO THE LIBERTIES OF JAILS, OF ESCAPES, PROCEEDINGS ON THE ELECTION OF A NEW SHERIFF, AND GENERAL PROVISIONS RELATING TO JAILS AND THE CONFINEMENT OF PRISONERS THEREIN.

Chapter 147. Of admitting Prisoners to the Liberties of Jails; of Escapes, and Proceedings on the Election of a new Sheriff.

Chapter 148. General Provisions relating to Jails and the Confinement of Prisoners therein.

CHAPTER 147.

OF ADMITTING PRISONERS TO THE LIBERTIES OF JAILS, OF ESCAPES, AND PROCEEDINGS ON THE ELECTION OF A NEW SHERIFF.

SECTION 1. Every person who shall be in the custody of the sheriff of any county by virtue, Who entitled to liberties of jail limits.

1. Of any *capias ad respondendum* : or,
2. Of any execution in a civil action : or,
3. By virtue of any attachment for the non-payment of costs : or,
4. In consequence of a surrender in exoneration of his bail :

Shall be entitled to the liberty of the jail limits, which limits shall be co-extensive with the limits of such county, upon executing a bond to such sheriff and his assigns, as prescribed in the next section.

SEC. 2. Such bond shall be executed by the prisoner and one or more sufficient sureties, being inhabitants and householders of the county, in a penalty, which shall be as follows : Penalty of bond and sureties.

1. It shall be not less than double the amount of the sum in which the sheriff was required to hold the defendant to bail, if he be in custody on original process, or be surrendered in exoneration of his bail before judgment docketed against him :

2. It shall be not less than double the amount directed to be levied by the attachment or execution, if he be in custody upon attachment or execution :

3. It shall be not less than double the amount for which judgment shall have been rendered against him, if he be surrendered after judgment docketed.

SEC. 3. Such bond shall be conditioned, that the person so in custody of such sheriff, shall not, at any time or in any manner, escape or go without the jail limits of the county, until legally discharged. Conditions of bond.

SEC. 4. Every such bond taken for the liberties of any jail, shall

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For whom held.

When prisoner
may be recom-
mited.Principal may be
surrendered by
sureties.How surrender
made.What an escape
of prisoner.Defence in suit
on bond.Effect of judg-
ment against
sheriff.Summary judg-
ment in favor of
sheriff.

be valid, and shall be held for the indemnity of the sheriff taking the same, and of the party at whose suit the prisoner executing such bond shall be confined.

SEC. 5. If a sheriff who shall have taken any such bond for the liberties of any jail, shall discover that any surety to such bond is insufficient, he may commit the prisoner who executed the same to close confinement in such jail, until other good and sufficient sureties shall be offered.

SEC. 6. The sureties in any bond given for the liberties of any jail, may surrender their principal at any time before judgment shall be rendered against them on such bond; but such bail shall not be exonerated thereby from any liability incurred before the making of such surrender.

SEC. 7. Such surrender may be made as follows: The bail may take their principal to the keeper of the jail, and upon the written requirement of such bail, the keeper shall take such principal into his custody, and thereupon endorse upon the bond given for the limits, an acknowledgment of the surrender of such principal; and such keeper shall also, if required, give the bail a certificate acknowledging such surrender.

SEC. 8. The going at large of any prisoner who shall have executed such bond, or of any prisoner who would be entitled to the liberties of any jail upon executing such bond, within the jail limits of the county in which he shall be in custody, shall not be deemed an escape of such prisoner; but in case any such prisoner shall go at large without the jail limits of such county, without the assent of the party at whose suit such prisoner shall be in custody, the same shall be deemed an escape and forfeiture of the bond so executed, and the sheriff in whose custody such prisoner shall have been, shall have the same authority to pursue and retake such prisoner, as if such escape had been made from the jail.

SEC. 9. In every suit brought by a sheriff on such bond, the defendants may give notice of a voluntary return of the prisoner to the liberties of the jail from which he escaped, or a recaption of such prisoner by the sheriff from whose custody he escaped, before the commencement of such suit, and may give evidence thereof in bar of such action; and such defendants shall be entitled to make such or any other defence to such suit, which might be made by such sheriff, to an action against him for an escape.

SEC. 10. But if an action shall have been brought against such sheriff for such escape, and due notice thereof shall have been given to the prisoner and his sureties who executed the bond for the jail liberties, the judgment against such sheriff shall be conclusive evidence of his right to recover against such prisoner and his sureties, to whom such notice was given, in the action on such bond, as to all matters which were or might have been controverted in the action against the sheriff.

SEC. 11. In every such action brought by a sheriff on a bond executed for the jail liberties, if it shall appear that judgment has been rendered against such sheriff for the escape of the prisoner, and that due notice of the pendency of the action against the sheriff was given to such prisoner and his sureties, to enable them to defend the same, the court shall render judgment in the suit upon such bond, at the first term after the commencement of such suit.

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Previous notice,
&c., required.
Staying proceed-
ings on judgment

SEC. 12. But to entitle any sheriff to move for such judgment, he shall have filed his declaration, and shall show to the court that he has given twenty days' notice of such motion.

SEC. 13. If it shall appear on the hearing of such motion, that the defendants have any meritorious cause of defence, which was not controverted in the action against the sheriff, and which by law could not have been so controverted, the court shall suspend proceedings on such judgment, until a trial in such action shall be had; but such judgment shall remain as a security for the sheriff.

SEC. 14. If such defence be established, the court shall vacate such judgment, and render judgment as in other cases.

When judgment
to be vacated.

SEC. 15. In every action brought by a sheriff on such bond, the recovery of a judgment against him for the escape of the prisoner, shall be evidence of the damages sustained by him, in the same manner as if such judgment had been collected; and such sheriff shall be entitled to recover the costs, and his reasonable expenses in defending the suit against him, as part of his damages.

Evidence of da-
mages, &c.

SEC. 16. If any such bond shall be forfeited, the party at whose suit the prisoner executing the same shall have been confined, or in case of his death, the executors or administrators of such party, shall be entitled to an assignment thereof, which shall be made by the sheriff taking the same, or his successor in office, or in case of a vacancy in his office, by his under sheriff, by an indorsement thereon.

Assigning bond.

SEC. 17. The party to whom such assignment shall have been made, may maintain an action on such bond as assignee of the sheriff taking the same, in the same cases in which such action might be maintained by such sheriff, and upon obtaining judgment therein, he shall recover damages for such breaches of the condition as shall have been assigned by him as follows:

Action by assign-
ees, damages
therein.

1. If the prisoner escaping was confined by virtue of an execution, or by virtue of an attachment for non-payment of costs, the measure of the plaintiff's damages shall be the amount directed to be levied by such execution or attachment, with interest thereon to the time of such recovery:

2. If such prisoner was confined by virtue of a *capias ad respondendum*, or upon a surrender in exoneration of his bail, made before or after judgment rendered against him, the plaintiff shall recover only the actual damages sustained by him.

SEC. 18. The acceptance of an assignment of any such bond, shall be a bar to any action by or on behalf of the party receiving such assignment, against the sheriff or other officer making the same, for any escape by the prisoner executing such bond, amounting to a breach of such bond.

Effect of assign-
ment.

SEC. 19. In every action brought by the assignee of such bond, the defendants shall be entitled to give notice of a voluntary return of the prisoner to the liberties of the jail, before the commencement of such action, in bar thereof, and to make any defence which they would be entitled to make, if such action had been brought in the name and for the benefit of the sheriff to whom such bond was executed.

Defence to action
of assignees.

SEC. 20. In case the party at whose suit any person shall have been confined to the liberties of a jail, shall refuse or neglect to take an assignment of the bond executed by such person, as herein before provided, and shall prosecute any sheriff for the escape of such person, the court in which such action shall be pending, shall by rule, stay all

Staying proceed-
ings against sher-
iff.

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Not in case of voluntary escape.

proceedings upon the judgment against such sheriff, until he shall have had a reasonable time to prosecute the bond taken by him, and to collect the amount of any judgment he may recover thereon.

SEC. 21. But the last preceding section shall not extend to authorize such stay of proceedings, in any action where the judgment shall have been recovered against any sheriff, for any escape committed with the assent, aid or assistance of such sheriff.

Of Escapes, and the Liability of Sheriffs therefor.

When prisoners to be actually confined.

SEC. 22. All prisoners committed to any jail upon process for contempt, or committed for misconduct in the cases prescribed by law, except on attachments for the non-payment of costs, shall be actually confined and detained within such jail, until they shall be from thence discharged by due course of law, or shall be removed to some other jail or place of confinement in the cases provided by law; and if any sheriff or keeper of a jail shall permit or suffer any prisoner so committed to such jail, to go or be at large out of his prison, except by virtue of some writ of habeas corpus or rule of court, or in such other cases as may be provided by law, he shall be liable to the party aggrieved, for his damages sustained thereby, and shall be deemed guilty of a misdemeanor.

When being without jail limits an escape.

SEC. 23. If any prisoner committed to any jail, by virtue of any capias ad respondendum, or upon a surrender in exoneration of his bail, made either before or after judgment rendered, shall go or be at large, without the jail limits of the county in which he shall have been imprisoned, without the assent of the party at whose suit such prisoner shall have been committed, the same shall be deemed an escape of such prisoner, and the sheriff having charge of such jail shall be answerable therefor to such party in an action of trespass on the case, to the extent of the damages sustained by him.

Ib.

SEC. 24. If any prisoner committed to any jail, in execution in a civil action, or upon an attachment for the non-payment of costs, shall go or be at large without the jail limits of the county in which he shall have been imprisoned, without the assent of the party at whose suit such prisoner shall have been committed, the same shall be deemed an escape of such prisoner, and the sheriff having charge of such jail shall be answerable therefor to such party for the debt, damages, or sum of money for which such prisoner was committed, to be recovered in an action of debt or of trespass on the case.

Defence by sheriff.

SEC. 25. In every action against a sheriff or other officer, for the escape of any prisoner, the defendant may give notice that before the commencement of such action, such prisoner voluntarily returned to the jail from which he escaped, or within the liberties thereof: or that such defendant re-took such prisoner, and had him within the jail from which he escaped, or within the liberties thereof, before the commencement of such action; and in either case, that such escape was made without the consent of such defendant.

Penalty on sheriff.

SEC. 26. Every sheriff or other officer, who shall demand or receive any reward, gratuity, or valuable thing, to procure, assist, connive at or permit any escape of any prisoner in his custody, shall be deemed guilty of a misdemeanor.

Ib.

SEC. 27. Every sheriff or other officer who shall be convicted of a violation of the last section, shall forfeit his office, and shall be forever thereafter incapable of executing the same.

Proceedings on the Election of a new Sheriff.

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SEC. 28. Whenever any new sheriff shall be elected in the place of any other, or upon the expiration of any sheriff's office, and shall have qualified and given the security required by law, the clerk of the county shall grant a certificate, under the seal of the circuit court for the county, that the person so elected has qualified and given such security.

Evidence of new sheriff having qualified.
12 Wend., 481.

SEC. 29. Upon the service of such certificate on the former sheriff, his powers as such sheriff, except in the cases otherwise expressly provided by law, shall cease.

When powers of former sheriff to cease.
12 Wend., 275.

SEC. 30. Within ten days after the service of such certificate upon such former sheriff, he shall deliver to his successor,

Jail, &c., to be delivered to successor.

1. The jail of the county, with all its appurtenances, and the property of the county therein :

2. All the prisoners then confined in such jail :

3. All process, orders, rules, commitments, and all other papers or documents in his custody, authorizing, or relating to, the confinement of such prisoners ; and if any process shall have been returned, a statement in writing of the contents thereof, and when returned :

4. All writs of *capias ad respondendum*, and other original process, and all precepts and other documents, for the summoning of a grand or petit jury, then in his hands, which shall not have been fully executed by him :

5. All executions, attachments, and final process, then in his hands, except such as the said former sheriff shall have executed, or shall have begun to execute by the collection of money thereon, or by a levy on property in pursuance thereof.

SEC. 31. At the time of such delivery, the said former sheriff shall execute an instrument, reciting the property, process, documents, and prisoners delivered, specifying particularly, the process or other authority by which each prisoner was committed, and is detained, and whether the same be returned or delivered to such new sheriff ; which instrument shall be delivered to such new sheriff, who shall acknowledge in writing upon a duplicate thereof, the receipt of the property, process, documents and prisoners therein specified, and shall deliver such duplicate and acknowledgment to the said former sheriff.

Acknowledgment of receipt of property, &c., by new sheriff.

SEC. 32. Notwithstanding the election of a new sheriff, the former sheriff shall return, in his own name, all writs of *capias ad respondendum*, all other original process, all attachments and all executions, which he shall have fully executed, and shall proceed to complete the execution of all final process and attachments, which he shall have begun to execute by a collection of money thereon, or by a levy on property in pursuance thereof.

Powers of former sheriff in relation to certain process.

SEC. 33. If any former sheriff shall neglect or refuse to deliver to his successor, the jail, process, documents and prisoners in his charge, as herein required, such successor may, notwithstanding, take possession of such jail, and take the custody of the prisoners therein confined, and may compel the delivery of such process and documents, in the manner prescribed in the one hundred and thirty-third chapter of these revised statutes.

Compelling delivery of jail, &c.

SEC. 34. If at the time when any new sheriff shall have qualified and given the security required by law, the office of the former sheriff shall be executed by his under sheriff, or by a coroner of the

Duty of under sheriff in certain cases.

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county, such under sheriff or coroner, shall in all things comply with the preceding provisions, and shall perform the duties required of such former sheriff.

CHAPTER 148.

GENERAL PROVISIONS RELATING TO JAILS, AND THE CONFINEMENT OF PRISONERS THEREIN.

Prisoners committed by courts of U. S. to be kept by sheriffs.

SECTION 1. It shall be the duty of the sheriffs of the several counties of this state, to receive into their respective jails, and keep all prisoners who shall be committed to the same, by virtue of any civil process issued by any court of record, instituted under the authority of the laws of the United States, until they shall be discharged by the due course of the laws of the United States, in the same manner as if such prisoners had been committed by virtue of process in civil actions, issued under the authority of this state; and every such sheriff may receive to his own use, such sums of money as shall be payable by the United States, for the use of the said jails.

Liability of sheriffs for safe keeping of such prisoners.

SEC. 2. Every sheriff or keeper of a prison, to whose jail any prisoner shall be committed, by any marshal or other officer of the United States, as provided in the preceding section, shall be answerable for the safe keeping of such prisoner, in the courts of the United States, according to the laws thereof.

Confinement of prisoners on civil process.

SEC. 3. Prisoners arrested on civil process, shall be kept in rooms separate and distinct from those in which prisoners detained on a criminal charge or conviction, shall be confined; and on no pretence whatever, shall prisoners on civil and criminal process, be put or kept in the same room.

Male and female prisoners.

SEC. 4. Male and female prisoners, unless they be husband and wife, shall not be put, kept or confined in the same room in any prison.

Liability of sheriff.

SEC. 5. Every sheriff or other officer, who shall offend against the provisions of either of the two last preceding sections, shall be liable to the party injured in three times the damages found by the jury; and shall be liable to an indictment for a misdemeanor, and upon conviction thereof, in addition to any other punishment, shall forfeit his office.

Jails in the several counties.

SEC. 6. The buildings now used as jails and prisons in the respective counties of this state, shall be and continue the jails of the said counties respectively, until other buildings shall be designated or erected for that purpose, according to law.

Using jails of contiguous counties.
1843, p. 23.

SEC. 7. If in any county there shall not be a jail, or the jail erected shall become unfit or unsafe for the confinement of prisoners, or shall be destroyed by fire or otherwise, the judge of the county court for such county shall, by an instrument in writing, to be filed with the clerk of the county, designate the jail of some contiguous county, for the confinement of the prisoners of their (*his*) county, which shall thereupon, to all intents and purposes, except as herein otherwise provided, become the jail of the county for which it shall have been so designated.

SEC. 8. A copy of such instrument of designation, duly certified by the clerk of the county with whom it is filed, under the seal of the circuit court thereof, shall be served on the sheriff and keeper of the jail so designated; whose duty it shall be from thenceforth, to receive into such jail, and there safely keep, all persons who may be lawfully confined therein, pursuant to the foregoing provisions.

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Duty of sheriff
on designation
being filed and
served.

SEC. 9. Such sheriff shall be responsible for the safe keeping of the persons so committed to such jail, in the same manner and to the same extent, as if he were sheriff of the county for whose use such jail shall have been designated, and with respect to the persons so committed, shall be deemed the sheriff of such county.

Responsibility of
sheriff.

SEC. 10. If any prisoner confined on civil process, shall have been admitted to the liberties of the jail of the county for which such designation shall have been made, previous to such designation, they shall, notwithstanding, be entitled to remain within such liberties, but may be removed to the jail so designated, and confined therein, by the sheriff of the county in which they were admitted to the liberties of the jail, in the same cases, and in the same manner as such sheriff might by law confine them in the jail of his own county.

Prisoners on lib-
ties to remain, &c.

SEC. 11. If any persons shall be in the custody of the sheriff of the county for which such designation shall have been made, subsequent to such designation, and shall be entitled, according to law, to the liberties of the jail thereof, they shall be admitted to the liberties of such jail, in the same manner, and in the same cases, as if no such designation had been made, but may be removed by such sheriff to the jail so designated, and confined therein, in the same cases and in the same manner, as such sheriff might by law confine them in the jail of his own county.

Prisoners arrest-
ed after designa-
tion made.

SEC. 12. If any persons confined in the jail so designated on civil process, or removed there, as herein before provided, shall by law be entitled to the liberties of the jail, the sheriff of the county in which the jail so designated shall be, shall admit them to the liberties of such jail, in the same manner and in the same cases, as if they had been originally arrested by such sheriff, on process directed to him.

Prisoners remo-
ved.

SEC. 13. Whenever a jail shall be erected for the county for whose use such designation shall have been made, or its jail shall have been rendered fit and safe for the confinement of prisoners, the judge of the county court for such county, shall, by an instrument in writing, to be filed with the clerk of the county, declare that the necessity for such designation has ceased, and that the same is thereby revoked and annulled.

Revoking desig-
nation of another
jail.

SEC. 14. The clerk of the county shall immediately serve a copy of such revocation upon the sheriff thereof, whose duty it shall be to remove the prisoners belonging to his custody, and so confined without his county, to his proper jail, and if any prisoners shall have been admitted to the liberties of the jail, in such other county, they shall also be removed, and shall be entitled to the liberties of the jail of the county to which they shall be removed, in the same manner as if they had been originally arrested in such county.

Proceedings on
revocation.

SEC. 15. Whenever by reason of any jail being on fire, or any building contiguous, or near to a jail, being on fire, there shall be reason to apprehend that the prisoners confined in such jail may be injured or endangered by such fire, the sheriff or keeper of such jail may, at his discretion, remove such prisoners to some safe and convenient

Removal of pris-
oners in case of
fire.

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place, and there confine them, so long as may be necessary to avoid such danger ; and such removal and confinement shall not be deemed an escape of such prisoners.

**Selling and using
liquor in jails.**

SEC. 16. No spirituous liquor shall on any pretence whatever, be sold within any building used and established as a jail ; nor shall any spirituous liquor be brought into any jail for the use of any person confined therein, or be furnished to any such prisoner, unless the same shall be certified to be absolutely necessary for the health of such prisoner, by some reputable physician, who shall specify the quantity and quality of the liquor that may be furnished to any prisoner, the name of the prisoner for whom, and the time when the same may be furnished.

**Penalty on jailors
and others.**

SEC. 17. Every person who shall sell or bring into any jail, any spirituous liquor, contrary to the provisions of the last preceding section, and every sheriff, keeper of a jail, assistant to such keeper, or other officer employed in or about the jail, who shall knowingly suffer any spirituous liquor to be sold or used in a jail, contrary to the foregoing provisions, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to imprisonment not exceeding one year, or a fine not exceeding two hundred and fifty dollars, or both, in the discretion of the court, and every sheriff or other officer so convicted shall forfeit his office.

**Declaration, &c.,
to be delivered to
prisoner.**

SEC. 18. Every sheriff or jailor, upon whom a declaration, notice, or any other proceeding directed to any prisoner in his custody, shall be served, shall, within five days thereafter, deliver the same to such prisoner, with a note thereon of the time of the service thereof, upon such sheriff or jailor ; and for every neglect or violation of this section, the sheriff or jailor guilty thereof, shall be liable to such prisoner for all damages occasioned thereby.

**Sheriffs may pass
through other
counties.**

SEC. 19. Any sheriff or other officer, who shall have arrested any prisoner, may pass over, across and through such parts of any other county or counties as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered, according to the command of the process by which such arrest shall have been made.

**Not to be deemed
an escape, &c.**

SEC. 20. Such conveyance shall not be deemed an escape ; nor shall the prisoner so conveyed, or the officers having them in their custody, be liable on any civil process, while passing through such other county or counties.

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CHAPTER 149.

OF COSTS, AND THE FEES OF OFFICERS.

Chapter 149. Of Costs, and the Recovery and Taxation thereof in Civil Cases.

Chapter 150. Of the Fees of certain Officers.

CHAPTER 149.

OF COSTS, AND THE RECOVERY AND TAXATION THEREOF IN CIVIL CASES.

SECTION 1. If the plaintiff in chancery, shall dismiss his bill or petition, or if the same shall be dismissed for want of prosecution, the defendant shall recover his costs, except in those cases where, according to the practice of the court, costs would not be awarded against such complainant or petitioner, upon a decree rendered on hearing the cause.

Costs on dismissing bill, &c., in chancery.
2 Paige, 372.

SEC. 2. In all other cases where no special provision shall be made by law, the costs of all suits and proceedings in chancery, shall be paid by such party as the court shall direct.

Costs in other cases in chancery.
2 Paige, 579.
3 do, 311.

SEC. 3. In the following cases, if the plaintiff recover judgment by default, upon confession, verdict, demurrer, or otherwise, in any action or proceeding at law, he shall recover his costs :

When plaintiff at law to recover costs.

1. In all actions of ejectment, or for waste, or private nuisance ; and in all proceedings to recover the possession of land forcibly entered, or forcibly or otherwise unlawfully detained :

2. In all actions to which the title to lands or tenements, or a right of way, or a right by prescription or otherwise, to any easement in any land, or to overflow the same, or to do any other injury thereto, shall have been put in issue by the pleadings, or shall have come in question on the trial of the cause :

3. In suits and proceedings upon writs of scire facias, audita querela, prohibition, or information in the nature of a quo warranto :

4. In all actions for the recovery of any debt or damages, or for the recovery of penalties of forfeitures, in cases where such actions are not cognizable before a justice of the peace, and in all actions of replevin :

5. In all actions where the plaintiff shall recover any sum, if it appear that his claim, as established at the trial, exceeded two hundred dollars, and the same was reduced by set-off :

6. In actions for trespass upon land, or for taking personal property, where the court before whom the same shall be tried, shall certify in their minutes, or the jury by whom the damages shall be

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assessed, shall find and return in their inquisition, that such trespass was wilful and malicious :

7. In actions for a false return, or for any other malfeasance or misfeasance, by any ministerial or judicial officer, in such capacity or office, except such actions against constables or other ministerial officers, touching their duties upon process issued in civil actions brought in a justice's court.

When no more costs than damages.

SEC. 4. If the plaintiff in an action for assault and battery, or false imprisonment, or for slanderous words, or for libel, recover less than fifty dollars, such plaintiff shall recover no more costs than damages.

When defendant to have costs.
12 Wend., 191,
289.

SEC. 5. In all actions and proceedings in which the plaintiff would be entitled to costs, upon a judgment rendered in his favor, if, after the appearance of the defendant, such plaintiff be non-suited, discontinued his suit, be non-processed, or judgment pass against him on verdict, demurrer, or otherwise ; or in case a plaintiff recover judgment, but not enough to entitle him to costs ; the defendant shall have judgment to recover against such plaintiff, his full costs, which shall have the like effect as all other judgments.

One of several defendants acquitted, &c. entitled to costs.
12 Wend., 236.

SEC. 6. When several persons are made defendants in any suit or proceeding, or in any action in which the plaintiff, upon a recovery would be entitled to costs, and one or more of them shall be acquitted by verdict on the trial, or by judgment upon plea in abatement, or on demurrer, or by the plaintiff's discontinuing, as to such defendant, every person so acquitted shall recover his costs of suit, in like manner as if judgment had been rendered in favor of all the defendants.

But not if court certify in certain cases, &c.
12 Wend., 227.

SEC. 7. But if such person be so acquitted in any action brought for the recovery of land, or the possession thereof, or for nuisance, waste, trespass, or trespass on the case for any non-feasance or misfeasance, and if the judge or court before whom such trial shall be had, or such judgment shall be given, shall certify in the minutes of the court that there was reasonable cause for making the person so acquitted, a defendant in such action, then such person shall not be entitled to recover such costs ; and no costs shall be recovered against him.

Ib. in action on contracts.

SEC. 8. If in any action founded upon a contract, the plaintiff fail to recover against one of several defendants on the trial, or if judgment on a plea in abatement, or on demurrer, be rendered in favor of one of several defendants ; or if, by the plaintiff's discontinuing as to such defendant, he be acquitted ; such defendant shall not be entitled to recover costs, unless a certificate be given by the judge or court before whom the trial shall be had, or the judgment shall be given, and be entered in its minutes, that such defendant was unreasonably and unnecessarily made a party to such action.

Single costs on recovery of double damages.

SEC. 9. Whenever, by the provisions of any statute, a plaintiff shall be entitled to recover double or treble the damages assessed by a jury, if such damages so doubled or trebled, as the case may be, entitled him to recover costs, he shall recover single costs only in such suit, except in cases otherwise specially provided for by law.

When defendant to recover taxed costs, and one half more.
12 Wend., 228.
4 do. 201.
7 do. 236.
9 do. 464.

SEC. 10. In the following actions, if judgment be rendered for the defendant upon verdict, demurrer, non-suit, non-pros, discontinuance of the plaintiff or otherwise, in any action, certiorari, writ of error or other proceeding, such defendant shall recover the amount of his taxed costs, and one-half thereof in addition :

1. In actions against public officers appointed under the authority

of this state, or elected by the people; or against any person specially appointed according to law, to execute the duties of such public officer; for or concerning any act done by such officer or person, by virtue of his office, or for or concerning the omission, by such officer or person, to do any act, which it was his official duty to perform:

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2. In actions against any other person, for doing any act by the commandment of such officers or persons, or in their aid or assistance, touching the duties of such office or appointment:

3. In actions against any person, for making any sale, or doing any other act by authority of any statute of this state.

SEC. 11. When double or treble costs shall be awarded to any defendant, the same shall be deemed to belong to such defendant, and the officers who may have rendered any services in such action, to such defendant, and the witnesses and jurors in such action, shall be entitled to receive and retain, only the single costs allowed by law for their services respectively.

To whom double costs belong.
6 Wend., 297.
9 do. 443.

SEC. 12. When there shall be several issues in any case, and a verdict shall be rendered for the plaintiff on one or more of them, and for the defendant on another, if the plaintiff obtain judgment upon the whole record, costs shall be awarded as follows:

Costs, when several issues, &c.
12 Wend., 285,
480.

1. When the substantial cause of action was the same in each issue, the plaintiff shall recover costs on those issues which were found for him, and shall not be liable to the defendant for the costs of the issue which shall have been found for the defendant:

2. When there are two or more distinct causes of action in separate counts, the plaintiff shall recover costs on those issues which are found for him, and the defendant on those which are found in his favor.

SEC. 13. If judgment be recovered for the defendant on the whole record, the costs of the issues which may be found for the plaintiff, shall not be allowed to either party.

Judgment for defendant on whole record, costs.

SEC. 14. When judgment shall be rendered in favor of a defendant, upon general demurrer to one or more counts in a declaration, and the plaintiff shall have judgment on other counts, on demurrer, on verdict or by default, the defendant shall be allowed his costs upon such judgment in his favor.

On general demurrer.
9 Wend., 445.

SEC. 15. When judgment shall be rendered for a defendant on a plea of misnomer, in abatement, no costs shall be allowed to either party.

On plea of misnomer.

SEC. 16. If, upon a writ of error, the judgment be reversed, the plaintiff in error shall recover costs, unless in such judgment a new trial be ordered, in which case the costs on such reversal shall be in the discretion of the court; and if a judgment be reversed in part, and affirmed in part, costs shall be awarded to either party in the discretion of the court.

On reversal of judgment.
7 Wend., 93, 147

SEC. 17. If, upon such writ, the judgment be affirmed, or the writ be discontinued or quashed, or the plaintiff in error be non-suited, the defendant in error shall recover costs; and also damages for the delay and vexation, to be assessed in the discretion of the court before whom the writ was returnable.

Costs and damages on affirmance.

SEC. 18. If the judgment so affirmed was rendered after verdict, the defendant in error may recover twice the amount of his taxed bill of costs, in the discretion of the court.

Double costs on affirmance.
5 Wend., 93.

SEC. 19. The court to which any writ of error may be returnable,

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Neglecting to prosecute writ of error or appeal.
10 Wend., 574.

Costs and damages on appeals from circuit and probate courts.
11 Wend., 530.

Costs on countermanding notice of trial.

Liability of the people for costs.

Relators liable for costs.

Costs on writs of mandamus, &c.
10 Wend., 599.

Costs on attachment.

In suits brought in name of another.
7 Wend., 497.
10 do. 622.

When security may be required.

9 Wend., 462.

or to which any appeal may be made, may award costs against the party neglecting to file such writ, or the transcript of the record intended to be removed thereby, or neglecting to file such appeal, and the pleadings and proceedings appealed from, according to law, and the rules of the court; and may also award costs against either party for any discontinuance or default.

SEC. 20. Upon appeals from probate courts to a circuit court, and from the circuit courts to the supreme court, costs shall be paid by the appellant or respondent, as shall be directed by the court to which the appeal is made; and upon confirming (*affirming*) any sentence, determination or decree, or upon the appeal being discontinued or quashed, the court may, in its discretion award damages for the delay and vexation caused by such appeal.

SEC. 21. Whenever a cause shall be noticed for trial by the plaintiff, and such notice be countermanded, the defendant shall be entitled to all the costs actually and in good faith incurred by him, previous to the service of such countermand.

SEC. 22. In all civil suits and proceedings by or in the name of the people of this state, instituted by any officer duly authorized for that purpose, and not brought on the relation, or for the use of any citizen, or upon any penal statute, the people shall be liable for costs in the same cases, and to the same extent, as if such suit or proceeding was instituted by an individual.

SEC. 23. When a suit or proceeding shall be instituted in the name of the people of this state, on the relation of any citizen, such relator shall be entitled to and liable for costs, in the same cases, and to the same extent, as if such suit or proceeding had been instituted in his own name.

SEC. 24. In suits and proceedings upon writs of mandamus, the supreme court may, in its discretion, award or refuse costs to any party therein; and upon refusing an alternative or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus.

SEC. 25. In proceedings by attachment, to enforce or protect the civil rights or remedies of parties, or for the non-payment of any sum of money, costs shall be awarded to be paid by the offending party.

SEC. 26. When any action shall be brought in the name of another, by an assignee of any right of action, or by any person beneficially interested in the recovery in such action, such assignee or person shall be liable for costs in the same cases, and to the same extent, in which a plaintiff would be liable, and the payment of such costs may be enforced by attachment in all cases where judgment is not by law required to be rendered therefor against such assignee or person interested.

SEC. 27. When a suit shall be commenced in any court,

1. For or in the name of the trustees of any debtor: or,
2. For or in the name of any person being insolvent, who shall have been discharged from his debts pursuant to law, brought for the collection of any debt contracted before the assignment of his estate: or,
3. For or in the name of any person committed in execution for a crime: or,
4. In the name of any infant whose next friend has not given security for costs:

The defendant may require such plaintiff to file security for the

payment of the costs that may be incurred by the defendant in such suit.

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SEC. 28. If after the commencement of a suit, all the plaintiffs shall become insolvent, and be discharged as aforesaid, or be sentenced to imprisonment in the state prison for any term less than for life, the defendant may also require such security to be filed.

lb. after suit brought.

SEC. 29. The order to file such security, and that all proceedings on the part of the plaintiff be stayed, until such security be filed and the sureties shall justify if excepted to, may be made by the court in which the action is pending, or by any judge thereof or circuit court commissioner in vacation, upon due proof, by affidavit, of the facts entitling the defendant thereto.

Order for security, &c.
9 Wend., 482.

SEC. 30. Such security shall be given in the form of a bond, in a penalty of at least one hundred dollars, with one or more sufficient sureties, to the defendant, conditioned to pay, on demand, all costs that may be awarded to the defendant in such suit.

How security given.
9 Wend., 482.

SEC. 31. Such bond shall be filed with a clerk of the court in which the action is pending, and notice thereof be given to the defendant or his attorney.

Bond to be filed.

SEC. 32. Within twenty days after the service of such notice, the defendant may except to the sufficiency of the sureties, by giving notice of such exception to the plaintiff's attorney.

Exception to sureties.

SEC. 33. Within twenty days after such notice of exception, the sureties shall justify, by an affidavit that they are worth double the penalty of such bond, over and above all debts; of which affidavit a copy shall be served on the defendant or his attorney; and such justification shall operate to discharge the order to stay proceedings.

Justifying by sureties, &c.

Taxation of Costs.

SEC. 34. Costs in the supreme court shall be taxed by one of the justices or a clerk thereof, and by such other officers as the supreme court shall, by general or special order, designate for that purpose; and upon such notice to the opposite party, as shall be prescribed by the general rules of the court.

By whom costs taxed in supreme court.

SEC. 35. Costs in the several circuit courts may be taxed by any officer authorized to tax costs in the supreme court, by circuit court commissioners or the clerks of the said circuit courts respectively, and upon the like notice as shall be required in the supreme court.

By whom taxed in circuit courts.

SEC. 36. Upon the settlement of an execution by a defendant, or upon settling any suit or demand, the sheriff or attorney claiming any fees which shall not have been taxed, shall, upon being required by the defendant, and on his paying the expenses thereof, have his fees taxed by some proper officer authorized to tax costs in the court in which the suit may be pending; or from which the execution shall have been issued.

When fees to be taxed.

SEC. 37. No sheriff or attorney shall collect any fees, after having been required as aforesaid, to have the same taxed, without such taxation having been made.

Not to be collected until taxed.

SEC. 38. The costs and expenses of foreclosing any mortgage by advertisement, shall be taxed by some officer authorized to tax costs in a circuit court, upon the requisition of any party liable to pay the same, and upon such party paying the expense thereof.

Taxing costs of foreclosure of mortgage.

SEC. 39. Every officer authorized to tax costs in any court for services rendered in any proceeding authorized by law, shall examine

Duties of taxing officers.

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Certain charges
to be proved.

Evidence of right
to costs, &c., in
certain cases.
6 Wend., 555.

the bills presented to him for taxation, whether such taxation be opposed or not, and shall be satisfied that the items charged in such bill are correct and legal; and shall strike out all charges for services, which, in his judgment, were not necessary to be performed.

SEC. 40. When there shall be charges in a bill of costs for the attendance of any witness, or for copies or exemplifications of documents or papers, or for any other disbursements, except to officers for services rendered, such charges for witnesses shall not be taxed without an affidavit stating the distance they respectively traveled, and the days they actually attended; and such charges for copies shall not be taxed without an affidavit that such copies were actually and necessarily used, or necessarily obtained for use; nor shall such disbursements be allowed without an affidavit specifying the items thereof particularly, nor unless they appear to have been necessary and reasonable in amount.

SEC. 41. If, upon the trial of any cause, the plaintiff's claim shall be reduced by set-off, or any other fact shall appear which will entitle either party to costs, or to double costs, the judge holding the court shall, on the application of either party, either before or after verdict rendered, cause an entry to be made in the minutes of the court, specifying that such fact appeared; and no evidence shall be received by any taxing officer of such matter, other than a certified copy of such minutes, or the certificate of the judge who tried the cause.

CHAPTER 150.

OF THE FEES OF CERTAIN OFFICERS.

Allowance of
fees.
1840, p. 182, &c.

SECTION 1. For the services mentioned in this chapter, hereafter done or performed in the several courts in this state, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed shall be allowed.

Fees of Clerks of the Circuit Courts.

Fees of clerks of
circuit courts.

SEC. 2. The fees of the clerks of the circuit courts, and clerks of counties, for any services herein specified, to be rendered by them respectively, shall be as follows:

For issuing and sealing every writ when filled up by the clerk, twenty-five cents; and each exemplification or certificate, when required, twelve cents:

Entering the return of every writ, and filing such writ, twelve cents:

Entering an appearance, retraxit, discontinuance, non-suit or default, twelve cents:

Entering every rule in term, founded on motion, twelve cents for each folio:

Entering every other rule, not exceeding two folios, six cents for each folio, and for every additional folio, four cents:

For certified copies of rules, the same fees as for entering such rules:

Every report upon an assessment of damages, or other matters referred to him, twenty-five cents :

Every certificate, thirteen cents ; but not to be allowed for certifying any paper to be a copy, for the copying of which he shall be paid :

Calling and swearing a jury, twenty-five cents :

Swearing each witness on trial, six cents ; and swearing every constable to take charge of a jury, twelve cents :

Entering special bail, thirteen cents :

Entering every cause in a calendar for the court, and making a copy thereof for the bar, six cents :

Entering every cause or suit without process, twenty-five cents :

Receiving and entering a verdict, twelve cents :

Certified copy of the minutes of a trial, when requested, twenty-five cents :

Entering every final judgment, twenty-five cents :

Entering satisfaction of a judgment, twelve cents :

Drawing a special jury in any cause, thirty-eight cents :

Attendance in striking a special jury, certifying the names selected, and delivering such certificate to each party, fifty cents :

Reading and filing a habeas corpus, certiorari, or writ of error, twelve cents :

For a subpoena, summons, capias or execution, when issued by a clerk on request, and for sealing the same, twenty-five cents :

Filing a declaration or other pleading, an affidavit or other paper or proceeding, six cents ; all papers annexed together, and filed at the same time, to be considered as one paper ; and no allowance to be made for reading any paper or proceeding in any case :

Copies and exemplifications of records and of pleadings, to be returned on certiorari or writ of error ; copies and exemplifications of all records, pleadings and proceedings, furnished on request, where no special provision is otherwise made, eight cents for each folio :

Searching the records or files in his office, if a copy is not required, ten cents for the records or files of each year, except for officers of the court :

Receiving and filing the papers of any insolvent, twelve cents in each case :

Copies of such papers, eight cents for each folio :

To every county clerk for attendance in canvassing the votes given at any election, one dollar for each day, and five cents per mile for travel :

For drawing all necessary certificates of the result of such canvass, thirteen cents for each folio :

For recording such certificates, eight cents for each folio :

Notifying every person appointed or elected to an office, when required by law, twenty-five cents :

For administering the oath of office to any officer, and certifying the same, twelve cents :

For determining and certifying the sufficiency of the sureties in any bond, required by law to be approved by him, twenty-five cents :

For all services required by law to be performed by such clerks respectively, and not specially provided for by law, such fees as the supreme court shall, by general rule or order prescribe, corresponding, as near as may be, with the rates herein prescribed ; provided, that

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the gross amount of the fees of any clerk of the circuit or county court, shall, in no case, exceed the following sums: In case of a judgment by cognovit or confession, two dollars: In any case wherein there is no appearance by the defendant, three dollars; and in any other case, eight dollars.

Fees of Clerks in the Supreme Court.

**Fees of clerks of
supreme court.**

SEC. 3. For drawing a writ of error or other process issued under seal of the court, thirty-seven and one-half cents:

For affixing the seal to any process of the court, thirteen cents:

For filing the papers sent at one time from a circuit court, thirteen cents:

Reading and filing any petition relating to any proceeding in court, eight cents:

Entering the appearance or default of appellant or plaintiff, or of defendant or respondent, thirteen cents:

Entering every rule or order, thirteen cents:

For a certified copy of every such rule or order, and all papers, pleadings and proceedings filed with him, six cents for each folio:

Entering every decree or sentence, six cents for each folio:

Entering every judgment or order, fifteen cents, and six cents for each folio more than two:

Engrossing every remittiter to be sent to a circuit court, eight cents for each folio:

Every certificate given on request, relative to any matter or cause, twelve and one-half cents:

For services in suits in equity transferred to the supreme court, where the fees are not specified in this section, the same fees as are allowed registers in chancery for the like services:

Taxing costs, eighteen cents:

Entering every satisfaction on the record, twelve cents:

Taking security in cases authorized by law, twenty-five cents:

Entering each cause in the calendar and making copy for the bar, six cents:

For searching records and files in his office, except for suitors and their attorneys, thirteen cents:

For services required by law, or the rules of the court, not herein provided for, such fees as the court shall direct.

Masters' Fees in Courts of Chancery.

**Fees of masters
in chancery.**

SEC. 4. For signing every summons for a party or witness to attend him, twelve cents:

For attending at the time and place assigned for hearing, and adjourning the same on request, or upon reasonable cause, fifty cents:

Attendance and hearing every argument upon any matter referred to him, one dollar and fifty cents:

Attendance and settling his report, one dollar:

Taking an account of what is due on every mortgage, and the security accompanying the same, if any, one dollar:

Drawing every report in pursuance of an order of reference to him, thirteen cents for each folio:

Drawing all schedules to be annexed to his report, ten cents for each folio:

Copies of reports and schedules to be filed, six cents for each folio :

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Copies of reports and schedules and all other proceedings furnished by the master to the parties upon request, six cents for each folio :

Examining into the circumstances of sureties required in any case, and certifying his opinion to the chancellor, fifty cents :

Appointing any person to appear as next friend for any infant, twenty-five cents :

Inspecting and examining an infant or infants who want guardians appointed ; inquiring who are willing to become guardians, and into their competency ; the proposed security, and the competency thereof ; and certifying the facts to the court, two dollars ; but when application is made by one petition in behalf of several infants, no additional charge to be made :

For taking the deposition of every witness, twenty cents for each folio :

Engrossing a fair copy for witness to sign, six cents for each folio :

Certifying each exhibit shown to a witness on his examination, twenty cents :

Attending court with the original depositions or exhibits, by its order, or on the request of either party, one dollar for each day :

Drawing every advertisement or public notice of the sale of property to be sold by him, fifty cents : and for every copy of such advertisement to be printed or posted up, twenty-five cents :

Attending at the time and place appointed for the sale of property by him, and adjourning the sale at the request of the parties, for good cause, or by order of the court, seventy-five cents :

Every deed of real estate sold by him under a decree or order, when prepared by him at the request of the parties, two dollars and fifty cents :

Signing and acknowledging a deed for property sold by him, when prepared by another person, fifty cents :

Settling the form of a deed to be executed under his directions by a third person, under a decree or order, one dollar :

Settling the form of an assignment of bonds, mortgages or other securities to be made under a decree or order, one dollar :

Perusing a bill or petition for an injunction or ne-exeat, and allowing or refusing the writ, one dollar :

Superintending and certifying the payment of money when paid under his direction by a decree or order, one dollar ; but no fee to be allowed for the payment of money arising from sales, or to a party in the suit, or into court :

Taking and reducing to form in writing, every recognizance entered into before him, by order of the court, fifty cents :

Taxing every bill of costs, including the bill of the different officers of the court, and reporting the amount taxed, fifty cents :

When a master is authorized to advertise in newspapers, property for sale, or for parties to come before him to prove debts or exhibit claims, he shall be allowed for printer's bills according to the legal rate of advertising in such papers, what he shall actually pay ; and where moneys are ordered to be put out by a master, and when an estate is sold by a master, under an order or decree, the master shall be allowed all necessary disbursements actually paid by him, and such allowance by way of commissions as the court shall judge reasonable

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after notice given to the party to be charged therewith, but not to exceed the sum of ten dollars :

When a master shall take an account of an estate, or of an administration thereof, or an account between parties in trade, or shall take any other account, under a decree or order, not included in the foregoing provisions ; or when extra services shall be rendered by a master in taking or stating an account ; the court may make a further allowance beyond the fees herein specified, as under the circumstances may be just and reasonable, upon notice to the party to be charged therewith.

Fees of Commissioners.

Commissioners
to take testimony.

SEC. 5. The persons to whom any commission shall be issued, to take testimony in any cause or matter pending in chancery, shall be entitled to receive the same fees as herein allowed to masters, and no other.

Fees of Registers in Chancery.

Fees of registers
in chancery.

SEC. 6. For drawing any common order, order by consent, special order or decree, when requested, thirteen cents for each folio :

Entering any order, decree or proceeding in the minutes, ten cents for each folio :

Engrossing every decree to be signed by the court, ten cents for each folio :

Exemplifying, upon request, under seal of the court, any paper or proceedings, six cents for each folio :

Examining and signing every final decree, and attending the court with the same, and obtaining the judge's signature thereto, fifty cents :

Filing any paper, six cents ; and no additional charge shall be made for reading or marking any paper filed by him :

For reading and marking any paper not filed by him, six cents :

Certified copies of papers or proceedings, for every folio, six cents :

Every other certificate, fifteen cents ; but no certificate to be allowed that a paper is a copy, for the copying of which he shall be paid :

Filing note of the issue in each cause, and entering the cause on the calendar for hearing, for the court and the parties, fifteen cents :

Entering any attachment or other process awarded by the court, or any amercement, twelve cents :

Entering, by order of the court, every appearance on process for contempt, ten cents :

Searching the minutes, files, dockets or decrees, or accounts of the court, for each year, six cents ; but no search to be allowed for, when the pleading, entry, or proceeding searched for, is to be engrossed or filed, or copied at the request of a party, and paid for, or to perfect the proceedings of the court :

Entering the receipt of moneys deposited in court, putting the same in a bank when required by the court, and entering the same in his bank book, and in his account with the court, fifty cents :

Purchasing stock, procuring a transfer thereof, and entering the same to the credit of the cause or of the party, for a sum not exceeding two hundred dollars, one per cent, and for any excess, one quarter of one per cent :

Making a transfer of stock by order of the court, one dollar :

Receiving the interest on stock, entering it to the credit of the cause or party, placing it in bank when required by the court, and entering it in his bank book, one per cent :

Putting out money by order of the court, on mortgage or any security other than stock, and examining into the validity of the security, for every sum not exceeding two hundred dollars, one per cent, and for any excess, one quarter of one per cent :

Transferring a bond and mortgage, or security other than stock, and entering the same in his accounts, one dollar, to be paid by the party to whom the transfer is made :

Paying interest to a party and entering the same in his accounts, for any sum not exceeding two hundred dollars, one half of one per cent, and for any excess, one quarter of one per cent, to be retained out of the interest money :

For any other services relative to the receipt, safe keeping, putting out or taking any security, for money, under the direction of the court, not herein provided for, such allowance and compensation, and from such of the parties, as the court may consider just and shall direct, by an order for that purpose, after notice to the party to be charged therewith :

For sealing every writ, twelve cents :

Drawing every writ or process, when required, fifty cents :

Entering the appearance of every defendant, six cents :

For issuing a commission to take testimony, fifty cents :

Entering every rule to produce witnesses, or to show cause against publication, twenty cents :

Receiving and marking every book, deed or paper carried to his office, by order of the court, or agreement of the parties, for inspection or safe keeping, thirteen cents :

Receiving and entering the return of any commission, thirteen cents :

For every notice given to the solicitor of a party, of the return of a commissioner to take an answer, or to take testimony, twenty-five cents :

For docketing every decree on request, twenty-five cents :

Attending court with the pleadings and papers, or any of them, in any cause, by direction of the court, or on the request of a party, twenty-five cents :

For filing acknowledgment of satisfaction of any decree, and entering the same in the docket thereof, twelve cents ; provided that in any suit not contested the register's fees shall not exceed ten dollars :

Fees of Circuit Court Commissioners, and other Officers and Persons authorized to perform the Services herein enumerated.

Sec. 7. For taking bail, thirty-eight cents :

Deciding upon an application for a writ of habeas corpus or certiorari, thirty-eight cents, whether such writ be allowed or not :

Every attendance upon the hearing of any motion for any order which such officer is authorized to grant, fifty cents ; and the like fee for attendance upon any motion for any official act to be done by such officer, when no fee is specially provided for such act :

Admitting any person to prosecute as the next friend, or to defend as guardian of any infant, twenty-five cents :

Every order for a commission to examine witnesses, twenty-five cents :

Fees of officers
authorized to
perform certain
duties.

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Attending, settling and certifying interrogatories to be annexed to a commission, fifty cents :

Every order for the examination of a witness, conditionally, or upon any proceedings to perpetuate his testimony, twenty-five cents :

Every day's attendance on the examination of such witness, one dollar and fifty cents :

Every necessary order in the progress of a cause, except orders to stay proceedings, twenty-five cents :

Signing a judgment, twelve cents :

Taxing a bill of costs, twenty-five cents :

Taking the acknowledgment of satisfaction of a judgment or decree, twenty-five cents :

Taking a bond or recognizance, when the same is required or authorized by law, twenty-five cents :

For deciding on the sufficiency of sureties, and certifying such sufficiency in cases where it shall appear, twenty-five cents :

For every precept for a jury, summons for a witness, or attachment against a witness, twenty-five cents :

For presiding at and conducting any trial by a jury, swearing such jury, receiving and entering the verdict, or discharging them ; or trying any issue in special proceedings without a jury, two dollars ; but not to extend to any trial or inquest in any action at law :

Receiving and filing the petition and accompanying papers of an insolvent debtor, fifty cents :

For every order, warrant, certificate, or appointment of assignees in such proceeding, twenty-five cents :

For deciding on the propriety of directing an assignment of the estate of any insolvent debtor, one dollar :

Signing the discharge of any insolvent debtor, seventy-five cents :

For attending to the selection of referees, and certifying their appointment, fifty cents :

For every order, warrant or attachment, made or issued in any special proceeding authorized by law, twenty-five cents :

For every notice to any party, officer or person, required to be given by any such officer, twenty cents :

For every report, and all other papers and proceedings which he may be required by law to prepare, in order to be signed by himself, in cases where no specific allowance shall have been made for such paper or proceeding, for drafting the same, ten cents for each folio, and for copying, six cents for each folio :

Hearing and deciding on the return of a writ of habeas corpus, one dollar :

For administering an oath, in cases where no fee is specially provided for by law, and certifying the same when required, twelve cents :

For taking and certifying the acknowledgment or proof of any conveyance or mortgage of real estate, or any other instrument which by law may be recorded, twenty-five cents for each person making such acknowledgment, or whose execution of such conveyance, mortgage or instrument shall be proved :

Taking a surrender of principal in any cause, twenty-five cents :

For a commitment of such principal, twenty-five cents :

Allowing a writ of habeas corpus or certiorari, twenty-five cents :

A warrant of restitution, or to put any person in possession of lands, fifty cents :

For marrying and making certificates and return thereof, one dollar and fifty cents.

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Fees of Judges of Probate.

SEC. 8. For granting letters of administration, when not contested, seventy-five cents, and when contested or opposed, one dollar and fifty cents : Fees of judges of probate.

Hearing any complaint, or an application for the appointment of a guardian, fifty cents :

Appointing a guardian fifty cents ; and when one guardian shall be appointed for more than one person at the same time, twenty-five cents for each person after the first, for whom such guardian shall be appointed :

Decree for probate of a will, when not contested, seventy-five cents ; when contested, one dollar and fifty cents :

Decree for settling an estate, fifty cents :

Partition of real estate, one dollar and fifty cents :

Order for distribution, fifty cents :

Examining and allowing an inventory, thirteen cents for each folio :

Administering an oath to an executor or other person, and certifying the same when necessary, twelve cents :

Examining and allowing accounts of executors, administrators or other persons, for the first folio, fifty cents, and for each additional folio, ten cents :

For each citation, summons or other process, twenty-five cents :

Warrant to appraise or divide an estate, fifty cents :

Issuing a commission to examine and allow claims against an estate, thirty-eight cents :

Approving and filing a bond given on an appeal, twenty-five cents :

Approving securities of executors or others, twenty-five cents :

Each order to divide an estate among heirs, or to set off dower, twenty-five cents :

Order for allowance to a widow, or to children under seven years of age, twenty-five cents :

Appointment of agent on partition of real estate, twenty-five cents :
Order for sale of personal estate, or for publication of any notice, or any other ordinary order in proceedings before him, where no other provision is expressly made, twenty-five cents :

Each order for sale of real estate to pay debts of an estate, fifty cents :

Extending time for settling estate, or examining and allowing claims against an estate, twenty-five cents :

Granting reference of accounts of executors or administrators, or allowing report thereon, fifty cents :

Disallowing application for letters of administration or probate of a will, to be paid by the party applying, fifty cents :

For a bond of executors, administrators or guardians, on an appeal, twenty-five cents :

For a warrant to set off dower, fifty cents :

Ordering and drawing a quietus, fifty cents :

Proportioning an insolvent estate among the creditors, seventy-five cents :

Entering and filing a caveat, twelve cents :

Entering the account of an executor, administrator, or guardian, ten cents for each folio :

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Entering each oath of an executor or administrator, six cents :

Searching the records or files in his office, for each year, six cents :

Recording wills and the proof thereof, letters of administration, of guardianship, and every other matter required to be recorded, for each folio, ten cents ; and where any will or other matter is in any other than the English language, eighteen cents for each folio :

For a translation of any will from any other than the English language, fifteen cents for each folio :

Copies and exemplifications of the probate of a will, or of letters testamentary or of administration, or of any other proceeding or order had or made before him, or of any other papers filed or recorded in his office, transmitted on appeal, or furnished on request to any person, eight cents for each folio :

For all services required by law to be performed by judges of probate, for which a compensation is not herein provided, such fees as shall, from time to time, be established by the supreme court, by general rules, corresponding, as near as may be, with the rates herein specified ; provided that the whole amount of fees taxed by any judge of probate in his own behalf, in any case not contested, shall in no case exceed fifteen dollars, unless the same be audited and certified to be just, by the board of supervisors of the county.

Fees of Executors and Administrators.

**Executors and
administrators.**

SEC. 9. For actual services, and in lieu of all other fees, one dollar per day, and fifty cents for each half day, and their actual and necessary disbursements for the benefit of the estate ; but the probate court may allow executors and administrators, in cases of unusual difficulty, or responsibility, such further sum as the judge may deem reasonable.

Fees of Witnesses.

Witnesses.

SEC. 10. For attending in any suit or proceeding pending in a court of record, seventy-five cents for each day, and thirty-seven and one half cents for each half day :

For attending in any justice's court, or before any officer, person or board, authorized to take the examination of witnesses, fifty cents for each day, and twenty-five cents for each half day :

For traveling, at the rate of six cents per mile in coming to the place of attendance, to be estimated from the residence of such witness if within this state, or from the boundary line of this state which such witness passed in coming, if his residence be out of the state. But this section shall not be so construed as to allow any fees to witnesses on behalf of the people in criminal prosecutions, or in suits for the recovery of fines, penalties or forfeitures :

The secretary of state, auditor general, state treasurer, attorney general, commissioner of the land office, any clerk, register of deeds, county surveyor or judge of probate, attending on a subpoena requiring the same with bills, records, or other written evidence, shall be entitled to one dollar per day, and for travelling, at the rate of six cents per mile in coming and returning from the residence of such witness.

Fees of Sheriffs in executing Process issued out of the Courts of Law and Equity, and by judicial and other Officers, and for other Services.

**Fees of sheriffs,
&c.**

SEC. 11. For serving a summons, writ of replevin, or any other

process by which a suit shall be commenced in a court of law, or a subpoena to appear and answer, in chancery, fifty cents when service is made on one defendant only, and for the service on each additional defendant, twenty-five cents :

For traveling in making such service, five cents per mile for going only, to be computed in all cases from the court house of the county in which the service is made, or from the place where the court has usually been held therein :

For taking a bond of a plaintiff in replevin, or taking a bond on the arrest of a defendant, or in any other case, where he is authorized to take the same, thirty-eight cents :

For a certified copy of such bond when requested, twenty-five cents :

For a note of every capias delivered to a defendant on request, six cents :

For a copy of every summons, scire facias, or declaration served by him, when made by the sheriff, six cents for each folio :

For a copy of every other writ, when demanded or required by law, thirteen cents :

For serving an attachment for the payment of money, or an execution for the payment of money, or a warrant issued for the same purpose, and delivered to him by the county treasurer or any supervisor, for collecting the sum of two hundred and fifty dollars or less, two and a half per cent, and for any sum more than two hundred and fifty dollars, one and one quarter of one per cent :

Advertising goods or chattels, lands or tenements, for sale, on any execution, if a sale be made, one dollar ; and if the execution be stayed or settled, after advertising and before sale, fifty cents :

The fees allowed by law and paid to any printer by such sheriff, for publishing an advertisement of the sale of real estate for not more than six weeks ; and for publishing the postponement of any such sale, the expense shall be paid by the party requiring the same :

The fees herein allowed for the service of an execution, and for advertising thereon, shall be collected by virtue of such execution in the same manner as the sum therein directed to be levied :

But when there shall be several executions against the defendant, at the time of advertising his property, in the hands of the same sheriff, there shall be but one advertising fee charged on the whole, and the sheriff shall elect on which execution he will receive the same :

For every certificate on the sale of real estate, fifty cents ; and for each copy thereof, twenty-five cents ; which, together with the register's fee for filing the same, shall be collected as other fees on execution :

For drawing and executing a deed, pursuant to a sale of real estate, one dollar, to be paid by the grantee in such deed :

Serving a writ of possession or of restitution, putting any person entitled, into the possession of premises, and removing the occupant, one dollar ; and the same compensation for traveling as is herein allowed on other writs :

Taking a bond for the liberties of the jail, thirty-eight cents :

Summoning a jury upon a writ of inquiry, attending such jury, and making and returning the inquisition, one dollar and fifty cents :

Summoning a special jury struck pursuant to an order of the court, and returning the panel, one dollar and twenty-five cents :

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Summoning a jury, pursuant to any precept or summons of any officer, in any special proceeding, seventy-five cents; and for attending such jury, when required, fifty cents:

Bringing up a prisoner upon habeas corpus, to testify or answer in any court, one dollar; and for traveling each mile from the jail, thirteen cents:

For attending any court with such prisoner, one dollar per day, besides actual necessary expenses:

Bringing up a prisoner upon a habeas corpus, with the cause of his arrest and detention, one dollar; and for traveling, thirteen cents for each mile from the jail:

Attending before any officer with a prisoner, for the purpose of having him surrendered in exoneration of his bail; or attending to receive a prisoner so surrendered, who was not committed at the time, and receiving such prisoner into his custody, in either case one dollar:

Attending a view when ordered by the court, one dollar and twenty-five cents per day, including the time occupied in going and returning:

Serving an attachment upon any ship, boat or vessel, in proceedings to enforce any lien thereon, created by law, fifty cents, with such additional compensation for his trouble and expenses in taking possession of and preserving the same, as the officer issuing the warrant shall certify to be reasonable.

For making and returning an inventory and appraisal of property attached in any case, one dollar per day each to the appraisers, for each day actually employed, and fifty cents for each half day; and for drafting the inventory, twenty-five cents for each folio; and for copying the same, six cents for each folio:

For selling any ship, boat or vessel, or the tackle, apparel and furniture thereof so attached, and for advertising such sale, the same fees as for sales on execution:

For giving notice of any general or special election, to the inspectors of the different townships and wards of his county, fifty cents for each township or ward, and the expenses of publishing such notice as required by law, such fees and expenses to be paid by the county, as other contingent expenses thereof:

For any services which may be rendered by a constable, the same fees as are allowed by law for such services to a constable:

For attending the supreme court, one dollar and fifty cents for each day, to be allowed by the auditor general on the certificate of the clerk, and paid out of the state treasury:

For attending a circuit court, one dollar and fifty cents for each day, to be allowed and paid by the county, in the same manner as other contingent charges of the county:

For summoning grand or petit jurors to attend the circuit court, thirty-eight cents for each juror summoned:

Serving a subpoena for witnesses, thirteen cents for each witness summoned, and ten cents for each mile actually traveled in going only; but when two or more witnesses live in the same direction, traveling fees shall be charged only from the farthest:

Keeping and providing for a debtor in jail, in all cases where the debtor is unable to support himself, thirty cents for each day:

For mileage on every execution, five cents per mile for going only, to be computed from the court house of his county:

For selling lands on the foreclosure of a mortgage by advertisement, and executing a deed to the purchaser, and for all services required on such sale, three dollars. TITLE XXIX.
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Fees of Coroners.

SEC. 12. For all services rendered by them, the same fees as are Coroners. herein allowed to sheriffs for similar services :

For confining a sheriff in any house, on civil process, fifty cents for each day, to be paid by such sheriff before he shall be entitled to be discharged from such confinement, unless otherwise ordered by the court :

For the view of a dead body, and for taking and returning an inquisition thereon, three dollars :

For traveling to the place of such view, six cents for each mile :

For every subpoena, warrant or venire for a jury, twenty-five cents :

Swearing each witness, ten cents ; but the charges for swearing witnesses in any one case, shall not exceed fifty cents :

For taking a recognizance, twenty-five cents :

All the fees herein allowed to coroners, except for such services authorized to be performed as sheriff as are not chargeable to the county, shall be allowed and paid by the proper county.

Fees of Constables in Civil Cases.

SEC. 13. For serving a warrant or summons, twenty-five cents : Constables.

For a copy of every summons delivered on request, or left at the dwelling of the defendant in his absence, ten cents :

For serving an attachment or writ of replevin, fifty cents ; and for a copy thereof, and of the inventory of the property seized, twenty-five cents :

For taking bond on replevin, twenty-five cents ; for a copy of such bond, twenty-five cents :

For serving a subpoena, twelve cents for service upon each witness summoned by him :

For serving an execution on the body, or goods and chattels of the defendant, twenty-five cents :

Committing a defendant to prison on execution, twenty-five cents :

For traveling in the service of process, six cents for each mile, from the place of service to the place of return :

Summoning a jury, fifty cents :

Attending upon a jury, twenty-five cents :

For collecting and paying over money on executions, four per cent upon all sums not exceeding two hundred dollars, and for all sums over that amount, two per cent. :

Advertising sale of property, thirty-eight cents :

Selling property, thirty-eight cents :

For attending a circuit court at the request of the sheriff, one dollar for each day, to be paid out of the county treasury.

Fees of Notaries Public.

SEC. 14. For drawing and copy of protest of the non-payment of a promissory note or bill of exchange, or of the non-acceptance of such bill, fifty cents, in the cases where by law such protest is necessary, but in no other case : Notaries public.

For drawing and copy of every other protest, twenty-five cents :

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CHAPTER 150.**

For drawing, copy, and serving every notice of non-payment of a note, or non-acceptance of a bill, twenty-five cents :

For drawing any affidavit, or other paper or proceeding, for which provision is not herein made, twenty cents for each folio, and for copying the same, six cents for each folio :

For taking the acknowledgment of deeds, and for other services authorized by law, the same fees as are allowed to other officers for similar services.

Fees of Justices of the Peace in Civil Cases.

Justices of the
peace.

SEC. 15. For a summons, warrant, or venire, thirteen cents :

Issuing a writ of attachment, twenty-five cents :

For a subpoena, thirteen cents :

Swearing a jury, twelve cents :

Swearing all the witnesses in a cause, eighteen cents :

Entering every final judgment, twenty-five cents :

Issuing execution, twenty-five cents :

Every continuance or adjournment, at the request of a party, thirteen cents :

Taking bail, recognizance, or other security, thirteen cents :

For making and filing a return upon an appeal, one dollar :

Taking depositions, examinations or confessions, thirteen cents for each folio :

Entering a discontinuance or satisfaction, seven cents :

Entering every assignment of a judgment, thirteen cents :

Entering an amicable suit, thirteen cents :

Appointing appraisers of estates of deceased persons, twelve cents in each case :

Marrying and making return thereof, one dollar and fifty cents :

For taking acknowledgment of deeds, twenty-five cents for each person acknowledging.

Fees of Registers of Deeds.

Registers of
deeds.

SEC. 16. For entering and recording any deed or other instrument, eleven cents for each folio, to be paid when the same is left for record :

For copies of any records, or papers, when required, seven cents for each folio :

Seal to exemplification, twenty-five cents :

For recording any deed or other paper, in any other than the English language, twenty cents for each folio :

For every entry of a discharge of a mortgage in the margin of the record, ten cents :

Searching the records and files in his office, six cents for each year for which searches shall be made :

For filing every notice of the pendency of a suit in chancery, and entering the same, six cents :

For filing every other paper, and making an entry thereof, when necessary, six cents :

Searching for every such paper, on request, three cents for each paper examined.

Fees of Appraisers, Commissioners and others.

Appraisers, com-
missioners, &c.

SEC. 17. All appraisers of estates of deceased persons, appraisers

of property taken on any writ of attachment or replevin, persons appointed under any legal process, or order for assigning dower, or making partition of real estate, sheriffs' aids in criminal cases, and all other private persons performing any other like service required by law, or in the execution of legal process, where no express provision is made for compensation therefor, shall be entitled to one dollar for each day, and fifty cents for each half day, for their services, and four cents a mile for travel in going and returning.

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CHAPTER 150.

Fees of Jurors.

SEC. 18. Each grand and petit juror, except talesmen, shall be entitled to one dollar for each day's attendance upon any circuit court, and six cents for each mile traveled in going and returning by the most usual route, to be paid out of the treasury of the county, by the treasurer thereof, on the certificate of the clerk of the court:

Fees of jurors.

Each talesmen summoned and acting as a juror in a court of record, shall be entitled to twenty-five cents for his services in each cause, to be paid in the same manner herein provided for the payment of grand jurors:

Each juror sworn in any action in a justice's court, or before any officer in any special proceeding allowed by law, or before any sheriff upon any writ of inquiry, shall be entitled to twenty-five cents, to be paid in the first instance by the party requiring such jury:

In each cause in which a jury shall be impaneled in any circuit court, the plaintiff shall pay to the clerk thereof for the use of the county, the sum of three dollars, immediately after the swearing of such jury, which shall be immediately paid by the clerk to the county treasurer:

Each juror sworn before any coroner, on any inquest taken by him, shall be entitled to one dollar for each day's attendance on such inquest.

Fees of County Judge.

SEC. 19. For all services in any amicable suit, when judgment is confessed on the first appearance of parties, seventy-five cents:

Fees of county judge.

For every continuance or adjournment of a cause, fifty cents:

For taking bail, recognizance or other security, when required by law, and approving the same, thirty cents:

For every order or notice required to be made or given by a county judge in the progress of a cause, except orders made on the day of trial, fifty cents:

For all services in a cause wherein judgment is confessed by defendant, or cause disposed of without trial on the merits, on return of process, one dollar:

For all services on the trial of a cause without a jury, including the rendition of judgment, one dollar and fifty cents:

For all services on the trial of a cause with a jury, including receiving and entering verdict and rendering judgment, two dollars; if the jury be discharged and a new trial ordered, or the cause otherwise disposed of, two dollars:

For every judgment of discontinuance, after adjournment or dismissal of suit or proceedings without trial, seventy-five cents.

Fees of Clerk of County Court.

SEC. 20. The fees of the clerk of the county court shall be the same as

Clerk of county court

**TITLE XXIX.
CHAPTER 150.**

Jurors and witnesses in county court.

Sheriffs, &c., in county court.

Secretary of state.

Printers for publishing insolvent notices.

Form of notice.

For publishing other notices, &c.

When notices, &c., to be published in state paper.

Special affidavit.

those allowed by law to the clerk of the circuit court for similar services, but no fees shall be charged except for service necessarily and actually rendered.

SEC. 21. The fees of witnesses and jurors in the county courts shall be the same as are allowed by law to jurors and witnesses in the circuit courts; but in all cases in the county courts the fees of the jury shall be paid in the first instance by the party requiring such jury.

SEC. 22. The fees of sheriffs and constables for services rendered in county courts, and for the service of process therefrom, shall be such as are allowed by law to constables for similar services in civil proceedings before justices of the peace, and where no fees for such services are provided for by law, they shall be entitled to such fees as are allowed to sheriff (*sheriffs*) for similar services in the circuit court.

Fees in the Office of the Secretary of State.

SEC. 23. For a copy of any act or resolution of the legislature, or of any other record, proceedings or papers kept in the office of the secretary of state, furnished to any private person, on request, twelve cents for each folio:

For a certificate and seal thereto, twenty-five cents.

Fees for publishing in Newspapers, Legal Notices and Advertisements.

SEC. 24. For publishing notices of any application of an insolvent for six weeks, and furnishing the evidence of such publication, one dollar and sixty-seven cents; if published ten weeks, two dollars.

SEC. 25. Such notice may be published in the following manner:

1. A general heading, stating whether such notices are for the purpose of being discharged from debt, or for the purpose of having the person exonerated from imprisonment, shall be prefixed to each class of applicants; next, the name of the applicant; next, the date of the first publication of such notice; next, the name of the officer before whom the creditors are required to appear; next, the place appointed for such appearance; next, the time for such appearance. And every such application shall be deemed as valid as if such notice had been published at length.

SEC. 26. For publishing any other notice, or any order, citation, summons, or any other proceeding or advertisement, required by law to be published in any newspaper, not more than forty cents per folio for the first insertion, and twenty cents per folio for each insertion after the first.

SEC. 27. If all the printers and proprietors of newspapers in any county in which any notice, order, citation, or other proceeding or advertisement, is by law required to be published, shall refuse to insert the same for the price herein specified, then it shall be lawful to publish the same in the state paper, instead of a newspaper printed in such county; and the publisher of the state paper shall not demand or receive any greater price for the publication thereof than that above prescribed.

SEC. 28. In all cases in which notices, advertisements or proceedings, shall be published in the state paper, in consequence of the refusal of the printers or proprietors of newspapers in any county as aforesaid, and in which an affidavit of such publication is required by law, there shall also be an affidavit of application having been made to all the printers or proprietors of newspapers printed in such coun-

ty, of the price herein specified having been tendered to them for publishing such notice, order, citation, advertisement or proceeding, and of their having refused; which affidavit, together with proof of such publication in the state paper, shall be deemed evidence of a compliance with any law requiring such notice, order, citation, advertisement or proceeding to be published in any particular county.

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CHAPTER 150.

SEC. 29. When notice of any sale by virtue of a mortgage, shall be published in the state paper, pursuant to the forgoing provisions, a copy of such notice shall be served at least four weeks before the time of such sale, on the person in possession of the mortgaged premises, in all cases where the same are occupied; and where they are not occupied, and the mortgagor, his heirs or personal representatives, shall reside in the county where such premises lie, then upon such mortgagor, his heirs or personal representatives, as the case may be. Proof of the service of such notice may be made, certified and recorded in the same manner, and with the like effect, as proof of the publication of a notice of sale under a mortgage.

Notice in certain cases.

General Provisions.

SEC. 30. The allowance of any fees by this chapter, shall not apply to any case where special provision is otherwise made by law for any particular service, but the fees for such service shall be such as are provided in the statute requiring the service, or providing the compensation therefor.

Special cases.

SEC. 31. The secretary of state, auditor general, treasurer, attorney general and commissioner of the land office respectively, shall be authorized to require searches in the respective offices of each other, and in the offices of the clerks of the supreme court, of the several circuit courts, of the county courts, of the registers in chancery or registers of deeds, for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof, and extracts therefrom, without the payment of any fee or charge whatever.

Certain searches, &c., to be gratuitous.

SEC. 32. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used, as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

"Folio" defined.

SEC. 33. No judge, justice, sheriff or other officer whatsoever, or other person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this state.

Extortion prohibited. 1844, p. 44.

SEC. 34. No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him, except in the case of prospective costs hereinafter specified; but this section shall not prevent any officer from demanding any fee herein allowed for any service of which he is entitled by law to require the payment, previous to rendering such service.

When fees not to be taken. 1844, p. 44.

SEC. 35. A violation of either of the two last sections shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him.

Penalty. 1844, p. 44.

**TITLE XXIX.
CHAPTER 150.**

Charges for services not actually rendered.

Prospective costs.

One draft only.

Writings copied into draft.

Fees for certified copies.

Witness fees when not allowed.

Officer receiving fees to give receipt.

Administering oath of office.

Certain officers to report amount of fees, &c.

Penalty for neglect.

Secretary of state to report abstract to legislature.

Sec. 36. No fee shall be taxed for services as having been rendered by any attorney, solicitor, clerk, sheriff or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided.

Sec. 37. Prospective costs may be charged and taxed for filing decree, and for one execution.

Sec. 38. Whenever any allowance is made for drafting any process, pleading, or proceeding, it shall be made for only one draft of the same, although several may have been issued and used.

Sec. 39. No record, writ, return, pleading, instrument or other writing, copied into any proceeding, entry, process or suggestion, shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

Sec. 40. The legal fees paid for certified copies of the depositions of witnesses, filed in any clerk's office, and of any documents or papers recorded or filed in any public office, necessarily used on the trial of a cause, or on the assessment of damages, shall be allowed in the taxation of costs.

Sec. 41. No attorney, solicitor or counsel in any cause, shall be allowed any fee for attending as a witness in such cause.

Sec. 42. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount so paid.

Sec. 43. No fee shall be charged by any officer, for administering the oath of office to any member of the legislature, to any military officer, or to any township officer, and no more than twelve cents shall be charged for administering such oath to any other officer.

Sec. 44. Each clerk of a circuit or county court, register of deeds, judge of probate, clerk of the supreme court, register in chancery, and justice of the peace, shall, on or before the fifteenth day of November in each year, make and transmit to the secretary of state, a report, setting forth the full amount of all the fees and charges which have accrued to him for official services of every description during the year ending on the last day of October then next preceding.

Sec. 45. Every clerk, judge of probate, register, or justice of the peace, who shall neglect to make such report, as required in the preceding section, shall forfeit the sum of one hundred dollars for each and every such neglect.

Sec. 46. The secretary of state shall report to the legislature, at the commencement of each annual session thereof, an abstract of all such reports received by him during the year then next preceding.

TITLE XXX.

OF CRIMES AND THE PUNISHMENT THEREOF.

Chapter 151. Of the Rights of Persons who are accused of Crimes and Offences.

Chapter 152. Of Offences against the Sovereignty of the State.

Chapter 153. Of Offences against the Lives and Persons of Individuals.

Chapter 154. Of Offences against Property.

Chapter 155. Of Forgery and Counterfeiting.

Chapter 156. Of Offences against Public Justice.

Chapter 157. Of Offences against the Public Peace.

Chapter 158. Of Offences against Chastity, Morality, and Decency.

Chapter 159. Of Offences against the Public Health.

Chapter 160. Of Offences against the Public Policy.

Chapter 161. General Provisions concerning Crimes and Punishments.

CHAPTER 151.

OF THE RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENCES.

SECTION 1. On the trial of every indictment, or other criminal accusation, the party accused shall be allowed to be heard by counsel, and he may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and meet the witnesses who are produced against him face to face.

Party accused
may have coun-
sel, &c.
Const., art. 1, § 10.

SEC. 2. No person indicted for an offence, shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

Person indicted
how convicted.

SEC. 3. No person shall be held to answer on a second indictment for any offence of which he has been acquitted by the jury, upon the facts and merits on the former trial; but such acquittal may be pleaded or given in evidence by him, in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

Former acquittal,
when a bar, &c.

SEC. 4. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

No person to be
punished until le-
gally convicted.

OF OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

Punishment for
treason.
Const. art. 1, § 16.
Misprision of
treason.

SECTION 1. Every person who shall commit the crime of treason against this state, shall suffer the punishment of death for the same.

SEC. 2. If any person who shall have knowledge of the commission of the crime of treason against this state, shall conceal the same, and shall not, as soon as may be, disclose and make known such treason to the governor thereof, or to some judge of a court of record within this state, he shall be adjudged guilty of the offence of misprision of treason, and shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the state prison not more than five years, or in the county jail not more than two years.

Evidence required.
Const. art. 1, § 16.

SEC. 3. No person shall be convicted of the crime of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

CHAPTER 153.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Murder of the
first degree.

SECTION 1. All murder which shall be perpetrated by means of poison or lying in wait, or any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree, and shall be punished by solitary confinement at hard labor in the state prison for life.

Murder of the
second degree.

SEC. 2. All other kinds of murder shall be deemed murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same.

Degree how to
be determined.

SEC. 3. The jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed by examination of witnesses to determine the degree of the crime, and shall render judgment accordingly.

Fighting duel out
of state, when
deemed murder
within this state.

SEC. 4. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, fight a duel without the jurisdiction of this state, or who shall fight a duel within this state, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall afterwards die within this state, shall be deemed guilty of murder of the first degree within this state, and may be indicted, tried and convicted in the county where such death shall happen.

Seconds in such
case.

SEC. 5. Every person, being an inhabitant or resident of this state, who shall be the second of either party in such duel as is mentioned in the preceding section, and shall be present as a second when such mortal wound is inflicted, whereof death shall ensue within this state,

shall be deemed to be an accessory before the fact to the crime of murder in this state, and may be indicted, tried and convicted in the county where the death shall happen, or in which such wound shall have been inflicted.

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CHAPTER 153.

SEC. 6. Any person indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence, in the state or country where such mortal wound was inflicted, and such plea, if admitted or established, shall be a bar to all further or other proceedings against such person, for the same offence within this state.

Plea of former conviction or acquittal.

SEC. 7. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or who shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intended to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison not more than ten years, or by a fine not exceeding one thousand dollars, and imprisonment in the county jail not more than three years, and shall also be incapable of holding or of being elected or appointed to any place of honor, profit, or trust, under the constitution or laws of this state.

Fighting duel, challenging, &c.

SEC. 8. Every person who shall accept any such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid or second, or surgeon, or who shall advise, encourage or promote such duel, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, and shall also be incapacitated, as mentioned in the preceding section.

Accepting challenge, aiding, &c.

SEC. 9. If any person shall post another, or in writing or print, shall use any reproachful or contemptuous language, to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

Posting, &c., for not accepting challenge, &c.

SEC. 10. Every person who shall commit the crime of manslaughter, shall be punished by imprisonment in the state prison, not more than fifteen years, or by fine not exceeding one thousand dollars, or both, at the discretion of the court.

Punishment for manslaughter.

SEC. 11. If any person, with malicious intent to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member, of any other person, every such person, and every person privy to such intent, who shall be present, aiding in the commission of such offence, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars, or both, at the discretion of the court.

Maiming or disfiguring or aiding therein.

SEC. 12. If any person shall assault another with intent to maim or disfigure his person in any of the ways mentioned in the preceding section, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, or both, at the discretion of the court.

Assault with intent to maim, &c.

SEC. 13. If any person shall attempt to commit the crime of murder, by poisoning, drowning or strangling another person; or by any means not constituting the crime of assault with intent to mur-

Attempt to murder by poisoning, &c.

**TITLE XXX.
CHAPTER 153.**

Assault with intent to murder.

der, every such offender shall be punished by imprisonment in the state prison for life.

SEC. 14. If any person shall assault another with intent to commit the crime of murder, every such offender shall be punished by imprisonment in the state prison for life, or any number of years.

Assault, and robbing, &c., from person, being armed.

SEC. 15. If any person shall assault another, and shall feloniously rob, steal and take from his person any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if, being so armed, he shall wound or strike the person robbed, he shall be punished by imprisonment in the state prison for life, or any number of years.

Assault with intent to rob or murder, being armed.

SEC. 16. If any person being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison not more than fifteen years.

Assault and stealing, &c., from person of another not being armed.
7 Mass., 242.

SEC. 17. If any person shall, by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be punished by imprisonment in the state prison not more than fifteen years.

Assault, with intent to rob and steal, not being armed.

SEC. 18. If any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob and steal, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison not more than ten years.

Malicious threats to extort money, &c.

SEC. 19. If any person shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offence, or shall by any written or printed communication maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, he shall be punished by imprisonment in the state prison or in the county jail, not more than two years, or by fine not exceeding one thousand dollars.

Rape; evidence.
1843, p. 211.
1841, p. 177, § 2.

SEC. 20. If any person shall ravish and carnally know any female of the age of ten years or more, by force and against her will, or shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the state prison for life, or for any term of years; and such carnal knowledge shall be deemed complete upon proof of penetration only.

Assault with intent to commit rape.

SEC. 21. If any person shall assault any female with intent to commit the crime of rape, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars.

Unlawfully taking a woman and compelling her to marry, &c.

SEC. 22. If any person shall take any woman unlawfully and against her will, and by force, menace or duress, compel her to marry him or any other person, or to be defiled, he shall be punished by imprisonment in the state prison for life, or any term of years.

Taking a woman with intent to compel her to marry, &c.

SEC. 23. If any person shall take any woman unlawfully and against her will, with intent to compel her by force, menace or duress, to marry him or any other person, or to be defiled, he shall be punished by imprisonment in the state prison not more than ten years.

SEC. 24. Every person who shall take or entice away any female under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage, or marriage, shall be punished by imprisonment in the state prison not exceeding three years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars.

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Enticing any female under 16 years of age for purpose of marriage, &c.

SEC. 25. Every person who, wilfully and without lawful authority, shall forcibly or secretly confine or imprison any other person within this state, against his will, or shall forcibly carry or send such person out of this state, or shall forcibly seize and confine, or shall inveigle or kidnap any other person with intent either to cause such person to be secretly confined or imprisoned in this state against his will, or to cause such person to be sent out of the state against his will, or to be sold as a slave, or in any way held to serve against his will; and every person who shall sell, or in any manner transfer for any term, the service or labor of any negro, mulatto, or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this state, to any other state, place, or country, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars.

Kidnapping, &c.

SEC. 26. Every offence mentioned in the preceding section, may be tried either in the county in which the same may have been committed, or in any county in or through which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be sold or transferred, shall have been taken, confined, held, carried or brought, and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defence, unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

Where offence may be tried.

SEC. 27. If any person shall mingle any poison with any food, drink or medicines, with intent to kill or injure any other person, or shall wilfully poison any spring, well or reservoir of water, with such intent, he shall be punished by imprisonment in the state prison for life, or any term of years.

Poisoning food, wells, &c.

SEC. 28. If any person shall assault another, with intent to commit any burglary, or any other felony, the punishment of which assault is not hereinbefore prescribed, he shall be punished by imprisonment in the state prison not more than five years; or by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding two years.

Assaults not before mentioned with intent to commit felony.

SEC. 29. Whoever shall be convicted, upon an indictment, of an assault, or an assault and battery, where no other punishment is prescribed, shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding two hundred dollars, or both such fine and imprisonment, in the discretion of the court.

Other assaults, &c.

SEC. 30. Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy or entice away any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian or other person having the lawful charge of such child, shall be punished by imprisonment in the state prison not more than ten years, or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars.

Enticing away child under 12 years of age, with intent to detain, &c.

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CHAPTER 154.Exposing child
with intent to
abandon.

SEC. 31. If the father or mother of any child under the age of six years, or any other person to whom any such child shall have been confided, shall expose such child in any street, field, house, or other place with intent wholly to abandon it, he or she shall be punished by imprisonment in the state prison not more than ten years.

Wilful killing un-
born child.

SEC. 32. The wilful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter.

Attempt to de-
stroy unborn
child.

SEC. 33. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.

Attempt to pro-
cure miscarriage
of pregnant wo-
man.

SEC. 34. Every person who shall wilfully administer to any pregnant woman any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER 154.

OF OFFENCES AGAINST PROPERTY.

Burning dwelling
house in the
night time.
16 Mass., 105.

SECTION 1. Every person who shall wilfully and maliciously burn, in the night time, the dwelling house of another, or shall, in the night time, wilfully and maliciously set fire to any other building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, shall be punished by imprisonment in the state prison for life; but if it shall appear on the trial, and the jury shall find, that at the time of committing the offence there was no person lawfully in the dwelling house so burned, the punishment, instead of imprisonment for life, may be imprisonment in the state prison for any term of years.

Burning a dwel-
ling in the day
time.

SEC. 2. Every person who shall wilfully and maliciously burn in the day time, the dwelling house of another, or any building adjoining such dwelling house, or shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the day time, or shall, in the day time, wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, shall be punished by imprisonment in the state prison for life, or for any term of years.

SEC. 3. Every person who shall wilfully and maliciously burn in

the night time, any meeting house, church, court house, college, academy, jail, rail road depot, or other building erected for public use ; or any banking house, ware house, store, manufactory, or mill of another, being with the property therein contained, of the value of one thousand dollars ; or any barn, stable, shop or office of another, within the curtilage of any dwelling house ; or any other building by the burning whereof any building mentioned in this section shall be burnt in the night time, shall be punished by imprisonment in the state prison for any term of years.

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Burning in the night, a meeting house, &c.

SEC. 4. Every person who shall wilfully and maliciously burn, in the day time, any building mentioned in the preceding section, the punishment for which, if burnt in the night time, would be imprisonment in the state prison for any term of years, shall be punished by imprisonment in the state prison not more than ten years.

Burning the same in the day time.

SEC. 5. Every person who shall wilfully and maliciously burn, either in the night time or in the day time, any banking house, ware house, store, manufactory, mill, barn, stable, shop, office, out house, or other building whatsoever of another, other than is mentioned in the third section of this chapter, or any bridge, lock, dam or flume, or any ship, boat or vessel of another, lying within the body of any county, shall be punished by imprisonment in the state prison not more than ten years.

Burning certain buildings, &c., in night or day time.

SEC. 6. Every person who shall set fire to any building mentioned in the preceding sections, or to any other material, with intent to cause any such building to be burnt, or shall by any other means attempt to cause any building to be burnt, shall be punished by imprisonment in the state prison not more than fifteen years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Setting fire with intent to cause building to be burnt.

SEC. 7. Every person who shall wilfully and maliciously burn or otherwise destroy or injure, any pile or parcel of wood, boards, timber or other lumber, or any fence, bars or gate, or any stack of grain, hay or other vegetable product, or any vegetable product severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil, or the soil itself, of another, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, or imprisonment in the county jail not more than one year.

Burning wood, lumber, fences, grain, &c.

SEC. 8. The preceding sections of this chapter shall severally extend to a married woman, who may commit either of the offences therein described, though the property burnt or set fire to, may belong partly or wholly to her husband.

Provisions to extend to married woman.

SEC. 9. Every person who shall wilfully burn any building, or any goods, wares, merchandise, or other chattels, which shall be at the time insured against loss or damage by fire, or shall wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner of the property or not, shall be punished by imprisonment in the state prison not more than ten years.

Burning property insured.

SEC. 10. Every person who shall break and enter any dwelling house, in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony ; or after having entered with such intent, shall break any such dwelling house, in the night time, any person being lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so

Burglary, being armed, making an assault.

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Burglary, not being armed, nor making an assault.

arming himself in such house, or making an actual assault on any person being lawfully therein, shall be punished by imprisonment in the state prison for life.

SEC. 11. Every person who shall break and enter any dwelling house, in the night time, with such intent as is mentioned in the preceding section, or who, having entered with such intent, shall break such dwelling house, in the night time, the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making any assault upon any person then being lawfully therein, shall be punished by imprisonment in the state prison not more than fifteen years.

Breaking and entering an office, &c., in the night, not adjoining a house.

SEC. 12. Every person who shall break and enter, in the night time, any office, shop, railroad depot or warehouse, not adjoining to or occupied with a dwelling house, or any ship, boat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, shall be punished by imprisonment in the state prison not more than fifteen years.

Entering in night time without breaking, or breaking in day time, and putting in fear.

SEC. 13. Every person who shall enter, in the night time, without breaking, or shall break and enter, in the day time, any dwelling house, or any outhouse thereto adjoining, occupied therewith, or any office, shop, store, railroad depot or warehouse, or any ship, boat, or vessel, within the body of any county, with the intent to commit the crime of murder, rape, robbery, larceny, or any other felony, the owner or any other person lawfully therein, being put in fear, shall be punished by imprisonment in the state prison not more than ten years.

Entering without putting in fear.

SEC. 14. Every person who shall enter any dwelling house, in the night time, without breaking, or shall break and enter in the day time, any dwelling house, or any out house thereto adjoining, and occupied therewith, or any office, shop, store, railroad depot or warehouse, or any ship, boat, or vessel, lying within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Stealing in day time in dwelling house, &c., or breaking in the night and stealing in public building.

SEC. 15. Every person who shall steal, in the day time, in any dwelling house, office, store, shop, or warehouse, ship, boat, or vessel, or shall break and enter, in the night time, any meeting house, church, court house, college, academy, or other building erected for public use, and steal therein, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Stealing at a fire.

SEC. 16. Every person who shall commit the offence of larceny by stealing in any building that is on fire, or by stealing any property removed in consequence of alarm caused by fire, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, or imprisonment in the county jail not more than one year.

Stealing from the person.

SEC. 17. Every person who shall commit the offence of larceny by stealing from the person of another, shall be punished by imprisonment in the state prison not more than five years, or by imprisonment in the county jail not more than one year.

SEC. 18. Every person who shall commit the offence of larceny, by stealing of the property of another, any money, goods or chattels, or any bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order or certificate; or any book of accounts, for or concerning money or goods due or to become due, or to be delivered; or any deed or writing containing a conveyance of land; or any other valuable contract in force; or any receipt, release or defeasance; or any writ, process or public record, if the property stolen exceed the value of twenty-five dollars, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year; and if the property stolen shall not exceed the value of twenty-five dollars, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one hundred dollars, or both, at the discretion of the court.

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Simple larceny.
1840, p. 42, &c.
1 Doug. Mich. R.,
42.

SEC. 19. Every person who shall have been convicted, upon indictment, either of the crime of larceny, or of being accessory to the crime of larceny, before the fact, and shall afterwards commit the crime of larceny, or be accessory thereto, before the fact, and be convicted thereof upon indictment, and every person who shall be convicted at the same term of the court, either as principal, or as accessory before the fact, in three distinct larcenies, shall be deemed a common and notorious thief, and shall be punished by imprisonment in the state prison not more than fifteen years.

Second conviction; conviction of three distinct larcenies at same term.

SEC. 20. Every person who shall buy, receive or aid in the concealment of any stolen money, goods or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Buying, &c., stolen goods.

SEC. 21. Upon a first conviction of the offence mentioned in the preceding section, and when the act of stealing property was a simple larceny, if the party convicted of buying, receiving, or aiding in the concealment of such stolen property, shall make satisfaction to the party injured to the full value of the property stolen, and not restored, he shall not be imprisoned in the state prison.

Satisfaction to party injured.

SEC. 22. Every person convicted of buying, receiving or aiding in the concealment of any stolen money, goods or property, knowing the same to have been stolen, having before been convicted of the like offence; and every person convicted at the same term of the court, of three or more distinct acts of buying, receiving or aiding in concealing as aforesaid, shall be deemed a common receiver of stolen goods, and shall be punished by imprisonment in the state prison not more than ten years.

Second conviction; conviction of three distinct acts at same term.

SEC. 23. In any prosecution of the offence of buying, receiving or aiding in the concealment of stolen money or other property, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

Receiver may be tried before conviction for the larceny.

SEC. 24. The officer who shall arrest any person charged as principal or accessory to any robbery or larceny, or with buying, receiving or aiding in the concealment of any money or other property, knowing the same to have been stolen, shall secure the property alleged to be stolen and hold the same irrepleviable, and shall be answerable for the same, and he shall annex a schedule thereof to his return, and

Officer to secure and hold stolen property.

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Recompense to
prosecutor and
officer.

upon conviction of the offender the stolen property shall be restored to the owner.

SEC. 25. Upon any conviction of burglary, robbery or larceny, or of buying, receiving or aiding in the concealment of any property known to have been stolen, the court may order a suitable recompense to the detector, and also to the officer who has kept and secured the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer, out of the treasury of the county.

Embezzlement
by officers, &c. of
banks.

SEC. 26. If any cashier, or other officer, agent or servant of any incorporated bank or institution, shall embezzle or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any bullion, money, note, bill, obligation or security, or any other effects or property, belonging to, and in possession of such bank or institution, or belonging to any person, and deposited therein, he shall be deemed by so doing to have committed larceny in such bank or institution, and shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than two years.

Embezzlement
in state treasury
or other public
office.

SEC. 27. If any officer, clerk or other person, employed in the treasury of this state, or in the treasury of any county, or in any other public office within this state, shall commit any fraud or embezzlement therein, he shall be punished by imprisonment in the state prison, not more than fourteen years, or by fine not exceeding two thousand dollars, or imprisonment in the county jail not more than two years, or both, at the discretion of the court.

Officer or agent
of state refusing
to deliver money,
&c. to successor,
&c.
1844, p. 32, § 3.

SEC. 28. If any officer or agent of this state, into whose hands money, books, papers, evidences of debt, or other property belonging to this state shall come by virtue of his office or agency, shall refuse or neglect, on demand, to deliver the same to his successor in office, or to the person authorized by law to receive or have charge of the same, he shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Embezzlement
by officers of cor-
porations, &c.

SEC. 29. If any officer, agent, clerk or servant of any incorporated company, or of any city, township, incorporated town or village, or other municipal corporation, or if any clerk, agent or servant of any private persons, or of a copartnership, except apprentices and other persons under the age of sixteen years, shall embezzle or fraudulently dispose of or convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of his employer or master, any money or other property of another, which shall have come to his possession, or shall be under his charge by virtue of such office or employment, he shall be deemed by so doing to have committed the crime of larceny.

Attorneys, &c.,
refusing to pay
over money col-
lected.
1844, p. 40, &c.

SEC. 30. If any attorney at law, solicitor or master in chancery, register of a court of chancery, clerk of any court of record, sheriff, constable, justice of the peace, or any other officer, shall collect or receive in such capacity, any money belonging to another, and shall neglect or refuse to pay the same to the person entitled thereto, within a reasonable time after demand thereof, such person so neglecting or refusing shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail

not more than one year, or by fine not exceeding four times the amount of money so received, or both, at the discretion of the court.

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SEC. 31. If any officer or stockholder of any bank or banking association, or any other person for such bank or banking association, shall sign, issue, or knowingly put in circulation, any bill or note of any such bank or banking association before the requisite amount of capital stock shall have been paid in, or before the president and directors thereof shall have fully complied with all the provisions of law requiring any other act or acts to be done before the issuing of any notes or bills, such officer or person shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year.

Bankers issuing bills, &c. without previous compliance with requirements of law.

SEC. 32. If any person shall, with intent to defraud, sign, issue or put in circulation, any note or bill, purporting to be a bill or note of any bank, when no such bank exists, such person shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year.

Issuing or circulating spurious notes.

SEC. 33. If any officer or agent of any bank, knowing such bank to be insolvent, or, in contemplation of the insolvency of such bank, or if any assignee of the property and effects of any insolvent bank, shall sell, or in any way dispose of or remove, any of the money, property or effects of such bank, with intent to defraud, delay or hinder any creditor thereof, in the collection of any claim or demand against such bank, every such officer or agent, and all persons who shall knowingly aid or assist in any such disposition or removal, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Fraudulent disposal of property of a bank, by officers, agents, &c. 1842, p. 6, § 3.

SEC. 34. If any carrier or other person to whom any money, goods, or other property, which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall be entrusted with such property, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods or property, at the place at which, or to the person to whom they were to be delivered, he shall be deemed by so doing, to have committed the crime of larceny.

Embezzlement by carriers, and others.

SEC. 35. If any warehouseman or forwarding merchant, or the agent or clerk of any warehouseman or forwarding merchant, shall knowingly execute and deliver to any person a receipt or certificate purporting to be for flour, wheat, pot or pearl ashes, or any grain, produce or thing of value, as being at the time of executing and delivering such receipt, in possession of such warehouseman or forwarding merchant, or in store for the person or persons, copartnership or firm named in any such receipt or certificate, without being at the time of executing and delivering such receipt in the actual possession of such flour, wheat, pot or pearl ashes, or other grain, produce or thing of value, as expressed in such certificate or receipt, such warehouseman, forwarding merchant, agent or clerk so executing and delivering any such receipt or certificate, shall be deemed guilty

Making fraudulent warehouse receipts, &c.

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of a felony, and on conviction thereof shall be punished by fine not exceeding two thousand dollars, or imprisonment in the state prison not exceeding three years, or by both such fine and imprisonment, in the discretion of the court; and sending or forwarding to a person who shall be duly entitled or authorized to receive the same, by the public mails or through the government post office, or by the hands of any person or persons, any such receipt or certificate as aforesaid, shall be deemed to be a good and lawful delivery thereof, within the meaning of this section.

Fraudulent disposition of property by agents, &c.

SEC. 36. Whenever money, or any goods, wares or merchandize or other personal property, shall be delivered, committed or entrusted to, or put in charge of, any person or persons as agent or agents with written instructions, or upon any written agreement signed by the party so instructed as agent, or such written instructions shall be delivered, or such written agreement shall be made, at any time after delivery to such agent or agents, of any money or goods, wares, merchandize, or other personal property, which instructions or agreements shall express the appropriation, purpose or use to which such money shall be applied, or the terms, mode or manner of the application or employment of such money, or which shall express or direct the disposition or use to be made by such agent, of any goods, wares, merchandize or other personal property, so delivered or entrusted to such agent; if the person or persons to whom any such money or goods, wares or merchandize or other personal property shall be so delivered, committed or entrusted, shall purposely and intentionally apply, appropriate, dispose of, or use any such money or goods, wares, merchandize or other personal property in any other way or manner, or for any other purpose, use or intent, than such as shall be expressed in such written instrument or agreement touching the same, the person or persons so doing, shall be deemed guilty of felony, and on conviction thereof before a competent tribunal, shall be subject to a fine not exceeding two thousand dollars, or imprisonment in the state prison for a term not exceeding three years, or by both such fine and imprisonment, in the discretion of the court.

Fraudulent appropriation of money by warehouse-men, &c.

SEC. 37. If any warehouseman or forwarder shall receive property on deposit or for sale on a specific contract or understanding, and shall embezzle or convert to his own use the property or moneys received on sale of such property, contrary to the previous contract or understanding, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Falsely personating another.

SEC. 38. Every person who shall falsely personate or represent another, and in such assumed character shall receive any money, or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed, by so doing, to have committed the crime of larceny.

Obtaining property by false pretences or tokens.

12 John., R., 292.
14 do. 371.
9 Cowen, 578.
9 Wend., 199.
11 do. 18, 357.

SEC. 39. Every person who, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any other false pretence, obtain the signature of any person to any written instrument, the making whereof would be punishable as forgery, or obtain from any person, any money, personal property, or

valuable thing, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

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Sec. 40. Every person who shall be convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the state prison not more than ten years, or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Gross frauds and
cheats at com-
mon law how
punished.

Sec. 41. If any person shall wilfully cast away, burn, sink, or otherwise destroy any ship, boat or vessel, within the body of any county, with intent to injure or defraud any owner of such vessel, or the owner of any property on board the same, or any insurer of such vessel or property, or any part thereof, he shall be punished by imprisonment in the state prison not more than fifteen years.

Wilfully destroy-
ing vessels, &c.

Sec. 42. If any person shall lade, equip or fit out, or assist in lading, equipping or fitting out any ship or vessel, with intent that the same shall be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer of such vessel, or of any property laden on board the same, he shall be punished by imprisonment in the state prison not more than fifteen years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year.

Fitting out vessel
with intent that
it shall be cast
away, &c.

Sec. 43. If the owner of any ship, boat or vessel, or of any property laden, or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of any such ship, boat or vessel, shall make out or exhibit, or cause to be made out or exhibited, any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimates of any goods or property laden or pretended to be laden on board such ship, boat or vessel, with intent to injure or defraud any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year.

Making false in-
voice of cargo.

Sec. 44. If any master, or other officer or mariner of any ship, boat or vessel, shall make or cause to be made, or shall swear to, any false affidavit or protest, or if any owner, or other person concerned in such vessel, or in the goods or property laden on board the same, shall procure any such false affidavit or protest to be made, or shall exhibit the same, with intent to injure, deceive or defraud any insurer of such ship, boat or vessel, or of the goods or property laden on board the same, he shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year.

Making or pro-
curing false pro-
test.

Sec. 45. Every person who shall wilfully and maliciously kill, maim or disfigure any horses, cattle, or other beasts of another, or shall wilfully and maliciously administer poison to any such horses, cattle or other beasts, or expose any poisonous substance with intent that the same should be taken or swallowed by them, or who shall wilfully and maliciously destroy or injure the personal property of another, by any means, not particularly mentioned or described in this chapter, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Maliciously kill-
ing, maiming, dis-
figuring, or poi-
soning beasts.
1 Mass., 59.

Sec. 46. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench,

Malicious injury
to dams, reser-
voirs, canals, &c.

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or any gate, flume, flash-boards, or other appurtenances thereof, or any of the wheels, mill-gear, or machinery of any mill, or shall wilfully or wantonly, without color of right, draw off the water contained in any mill pond, reservoir, canal or trench, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Malicious injury
to bridges, turn-
pike gates, &c.

SEC. 47. Every person who shall wilfully and maliciously break down, injure, remove or destroy any public or toll bridge, or any rail road, or any turnpike gate, or any lock in any dam, or any lock, culvert or embankment of any canal, or who shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

Maliciously inju-
ring house or oth-
er building, &c.;
1840, p. 44, § 6.

SEC. 48. Every person who shall wilfully and maliciously destroy or injure any house, barn or other building of another, or the appurtenances thereof, shall be punished by imprisonment in the state prison not more than five years, or by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Maliciously or
wantonly inju-
ring fruit trees,
fences, &c.
3 Greenl., 177.

SEC. 49. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down or destroy, or otherwise injure any fruit tree, or any other tree not his own, standing or growing for shade, ornament or other useful purpose, or shall maliciously break down, injure, mar or deface any fence belonging to or enclosing lands not his own, or shall maliciously throw down or open any gate, bars or fence, and leave the same down or open, or shall maliciously or injuriously sever from the freehold of another any produce thereof, or any thing attached thereto, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one hundred dollars.

Maliciously inju-
ring monuments,
extinguishing
lamps, &c.

SEC. 50. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any township, or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any mile stone, mile board, guide post or guide board, erected upon any highway or other public way, turnpike or rail road, or shall wilfully or maliciously deface or alter the inscription on any such stone, post or board, or shall wilfully or maliciously mar or deface any building or any sign board, or extinguish any lamp or break, destroy or remove any lamp, or any lamp post, or any railing or posts, erected on any bridge, side walk, street, highway, court or passage, shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding fifty dollars, or both at the discretion of the court.

Wilful trespass
by cutting or de-
stroying wood,
timber, grain, &c.

SEC. 51. Every person who shall wilfully commit any trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or any roots, fruit or plant there being, or by cutting down or carrying away any grass, hay, or any kind of grain standing, growing or being

d, or by carrying away from any wharf or landing place, or warehouse, any goods whatever, in which he has property, without the license of the owner, of the value more, shall be punished by imprisonment in the county-house sixty days, or by fine not exceeding one hundred dollars, or by both such imprisonment and fine, at the discretion of the court.

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[illegible]

**Wilful trespass
by entering gar-
dens, orchards,
&c.**

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shall be punished by imprisonment in the state prison not more than fourteen years, or in the county jail not more than one year.

Forgery of re-
cords and other
instruments.
2 Mass., 397.
10 do. 181.
15 do. 526.
17 do. 46.

SEC. 2. Every person who shall utter and publish as true, any false, forged, altered or counterfeit record, deed, instrument or other writing mentioned in the preceding section, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than fourteen years, or in the county jail not more than one year.

Uttering forged instruments.

SEC. 3. Every person who shall falsely make, alter, forge or counterfeit any note, certificate, bond, warrant or other instrument, issued by the treasurer of this state, or by any commissioner or other officer authorized to issue the same, for any debt of this state, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than seven years, or in the county jail not more than one year.

**Forging state
notes, warrants,
&c.**

SEC. 4. Every person who shall falsely make, alter, forge or counterfeit any bank bill or promissory note payable to the bearer thereof,

Forging bank bills.

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or to the order of any person, issued by any incorporated banking company in this state, or payable therein, at the office of any banking company incorporated by any law of the United States or of any other state, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not more than seven years, or in the county jail not more than one year.

Having in possession counterfeit bills with intent, &c.
2 Mass., 138.
8 do. 59.
4 Pick., 233.

SEC. 5. If any person shall have in his possession at the same time, ten or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, payable to the bearer thereof, or to the order of any person, such as are mentioned in the preceding sections, knowing the same to be false, altered, forged or counterfeit, with intent to utter the same as true, and thereby to injure and defraud as aforesaid, he shall be punished by imprisonment in the state prison not more than seven years, or in the county jail not more than one year.

Passing counterfeit bills.
11 Mass., 136.

SEC. 6. Every person who shall utter or pass, or tender in payment as true, any such false, altered, forged, or counterfeit note, certificate or bill of credit for any debt of this state, any bank bill or promissory note, payable to the bearer thereof, or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Second conviction; three convictions at same term.

SEC. 7. If any person who shall have been convicted of the offence mentioned in the preceding section, shall be convicted of a similar offence after a former conviction, or if any person shall, at the same term of the court, be convicted of three distinct charges of the said offence, he shall be deemed a common utterer of counterfeit bills, and shall be punished by imprisonment in the state prison not more than ten years.

Having counterfeit bills with intent, &c.

SEC. 8. Every person who shall bring into this state, or shall have in his possession, any false, altered, forged or counterfeit bill or note in the similitude of the bills or notes payable to the bearer thereof, or to the order of any person, issued by or for any bank or banking company, established in this state, or in any of the British provinces in North America, or in any other state or country, with intent to utter or pass the same, or to render the same current as true, knowing the same to be false, forged or counterfeit, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Tools, &c., for counterfeiting.
2 Mass., 128.

SEC. 9. Every person who shall engrave, make or mend, or begin to engrave, make or mend, any plate, block, press, or other tool, instrument or implement, or shall make or provide any paper or other material, adapted or designed for the forging and making any false or counterfeit note, certificate or other bill of credit in the similitude of the notes, certificates, bills of credit issued by lawful authority for any debt of this state, or any false or counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any of the British Provinces in North America, or in any foreign state or country; and every person who shall have in his possession any such plate or block, engraved in whole or in part, or any press or other

tool, instrument or implement, or any paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false or counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

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SEC. 10. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for altering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of such bank may be dispensed with, if their place of residence shall be out of this state, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and the counterfeit bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

When testimony of president, &c., of bank dispensed with.
2 Pick., 47.

SEC. 11. In all prosecutions for forging or counterfeiting any note, certificate, bills of credit or other security issued in behalf of the United States, or in behalf of any state or territory, or for uttering, publishing or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit or security, or for being possessed thereof with intent to utter or pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory on whose behalf such note, certificate, bill of credit or security, purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit.

Sworn certificate made evidence.

SEC. 12. If any person shall connect together different parts of several bank notes, or other genuine instruments, in such a manner as to produce an additional note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, in like manner as if each of them had been falsely made or forged.

Connecting parts of instruments.
10 Mass., 34.

SEC. 13. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft or other evidence of debt, issued by said corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor ever have existed.

Affixing fictitious signature.
2 Mass., 77.

SEC. 14. In any case where an intent to defraud is required to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be deemed sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city or township, or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

Intent to defraud, statement and proof.

SEC. 15. Every person who shall counterfeit any gold or silver coin, current by law or usage within this state, and every person who

Counterfeiting coin, or having five or more pla-

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ces with intent,
&c.
8 Mass., 59.

shall have in his possession, at the same time, five or more pieces of false money or coin, counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life, or for any term of years.

Less than five
pieces with in-
tent, &c.; utter-
ing counterfeit
coin.

SEC. 16. Every person who shall have in his possession any number of pieces less than five, of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter and pass the same as true, and any person who shall utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Second convic-
tion; three con-
victions at same
term.

SEC. 17. If any person who shall have been convicted of either of the offences mentioned in the preceding section, shall be again convicted of either of the same offences, committed after the former conviction, or if any person shall, at the same term of the court, be convicted upon three distinct charges of the said offences, he shall be deemed a common utterer of counterfeit coin, and shall be punished by imprisonment in the state prison not more than fifteen years.

Tools for coining
with intent, &c.
1 Doug., Mich. R.
207.

SEC. 18. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession, any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining, or making any counterfeit coin, in the similitude of any gold or silver coin, current by law or usage in this state, with intent to use or employ the same, or to cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

CHAPTER 156.

OF OFFENCES AGAINST PUBLIC JUSTICE.

Perjury, punish-
ment for.
12 Mass., 274.

SECTION 1. Every person who, being lawfully required to depose the truth in any proceeding in a court of justice, shall commit perjury, shall be punished, if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison for not more than fifteen years.

What deemed
perjury.

SEC. 2. If any person authorized by any statute of this state to take an oath, or if any person of whom an oath shall be required by law, shall wilfully swear falsely, in regard to any matter or thing, respecting which such oath is authorized or required, such person shall be deemed guilty of perjury, and shall be punished by imprisonment in the state prison as provided in the preceding section.

Subornation of
perjury.

SEC. 3. Every person who shall be guilty of subornation of per-

jury, by procuring another person to commit the crime of perjury, shall be punished in the same manner as for the crime of perjury. TITLE XXX.
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SEC. 4. If any person shall endeavor to incite or procure any person to commit the crime of perjury, though no perjury be committed, he shall be punished by imprisonment in the state prison not more than five years, or imprisonment in the county jail not more than one year. Endeavoring to
incite another to
commit perjury.

SEC. 5. Whenever it shall appear to any court of record, that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceeding in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may immediately commit such witness or party, by an order or process for that purpose, or may take a recognizance with sureties, for his appearing to answer to an indictment for perjury; and thereupon the witnesses to establish such perjury, may, if present, be bound over to the proper court, and notice of the proceedings shall forthwith be given to the prosecuting attorney. Proceeding when
person is suspected
by court.

SEC. 6. If, in any proceeding in a court of justice, in which perjury shall be reasonably presumed, as aforesaid, any papers, books or documents shall have been produced, which shall be deemed necessary to be used on any prosecution for such perjury, the court may, by order, detain the same from the person producing them, so long as may be necessary in order to their being used in such prosecution. Securing papers.

SEC. 7. Every person who shall corruptly give, offer or promise, to any executive, legislative or judicial officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding three thousand dollars, and imprisonment in the county jail not more than one year. Bribes to officers.

SEC. 8. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding, that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, and be forever disqualified to hold any public office, trust or appointment under the constitution or laws of this state, and shall be punished by imprisonment in the state prison not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not more than one year. Officers accepting
bribes.

SEC. 9. Every person who shall corrupt, or attempt to corrupt, any master in chancery, auditor, juror, arbitrator or referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such master in chancery, auditor, juror, arbitrator or referee, in relation to any matter which may be pending in the court, or before an inquest, or for the decision of which such arbitrator or referee shall have been appointed or chosen, Corrupting ju-
rors and others.

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Accepting bribes,
by jurors and
others.

shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

SEC. 10. If any person summoned as a juror, or chosen or appointed as an arbitrator, or if any master in chancery, or auditor, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determination of which such master in chancery, auditor, arbitrator or referee shall have been chosen or appointed, he shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Aiding escapes;
rescuing prisoners.
1840 p. 43, § 3.

SEC. 11. Every person who shall convey into any jail, prison, or other like place of confinement, any disguise, or any instrument, tool, weapon or other thing, adapted or useful to aid any prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall by any means whatever, aid or assist any such prisoner in his endeavor to make his escape therefrom, whether such escape be effected or attempted, or not, and every person who shall forcibly rescue any prisoner, held in custody upon any conviction or charge of an offence, shall be punished by imprisonment in the state prison not more than seven years; or, if the person whose escape or rescue was effected or intended, was charged with an offence not capital, nor punishable by imprisonment in the state prison, then the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Aiding escape
from an officer.

SEC. 12. Every person who shall aid or assist any prisoner in escaping or attempting to escape from any officer or person who shall have the lawful custody of such prisoner, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Suffering escape
from prison.

SEC. 13. If any jailor, or other officer, shall voluntarily suffer any prisoner in his custody upon conviction, or upon any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer, upon conviction, for the crime or offence wherewith he stood charged.

Suffering negligent escape; refusing to receive a prisoner.

SEC. 14. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or any lawful process whatever, he shall be punished by imprisonment in the county jail not more than two years, or by fine not exceeding one thousand dollars.

Refusing to arrest, suffering escape.

SEC. 15. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

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CHAPTER 136.Refusing to aid
sheriff, &c.

Sec. 16. If any person being required by any sheriff, deputy sheriff, coroner or constable, shall neglect or refuse to assist him in the execution of his office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars.

Refusing to ap-
prehend on being
required by jus-
tice of the peace.

Sec. 17. If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse to obey such justice, shall be punished in the same manner that is provided in the preceding section for refusing assistance to a sheriff; and no person to whom such justice shall be known, or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, or pretence of ignorance of his office.

Falsely assuming
to be a justice,
&c.

Sec. 18. If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, or to require any person to aid and assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, or shall falsely take upon himself to act or officiate in any office or place of authority, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four hundred dollars.

Disguising to re-
sist, &c.

Sec. 19. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder or interrupt any officer or any other person, in the legal performance of his duty, or the exercise of his rights under the constitution and laws of this state, whether such intent be effected or not, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, and may also be bound to good behaviour for the term of one year, after conviction of the offence, or after the expiration of such imprisonment.

Concealing and
compounding of-
fence.
16 Mass., 91.

Sec. 20. If any person, having knowledge of the commission of any offence punishable with death, or by imprisonment in the state prison, shall take any money, or any gratuity or reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall, when such offence of which he had knowledge, was punishable with death, or imprisonment in the state prison for life, be punished by imprisonment in the state prison not more than five years, or in the county jail not more than one year; and where the offence, of which he so had knowledge, was punishable in any other manner, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Officers omitting
duty for reward.

Sec. 21. If any sheriff, coroner, constable or other officer authorized to serve legal process, shall receive from a defendant, or from any other person, any money or other valuable thing, as a consideration, reward, or inducement, for omitting or delaying to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty per-

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Official extortion.
1 Mass., 227.
2 do., 523.
16 do. 93.

taining to his office, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars.

SEC. 22. If any person shall wilfully and corruptly demand and receive from another, for performing any service or any official duty, for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, he shall be deemed to have committed the offence of extortion, and shall be punished by a fine not exceeding one hundred dollars; but no prosecution for such offence shall be sustained, unless it shall be commenced within one year next after the offence was committed.

Obstructing sheriff, &c. in the execution of process.
1840, p. 42, § 2.

SEC. 23. If any person shall knowingly and wilfully obstruct, resist or oppose any sheriff, coroner, constable or other officer or person duly authorized, in serving or attempting to serve or execute any process, rule or order, made or issued by lawful authority, or shall assault, beat or wound any sheriff, coroner, constable or other officer duly authorized, while serving or attempting to serve or execute any such process, rule or order, or for having served or attempted to serve or execute the same, every person so offending shall be punished by imprisonment in the state prison not more than two years, or by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Breaking prison.
1840, p. 43, § 4.

SEC. 24. If any person, being imprisoned in the state prison for any term less than for life, shall break prison and escape, or break prison, though no escape shall actually be made, or shall, by force and violence attempt to escape therefrom, he shall be punished by further imprisonment in the state prison not more than three years, or by fine not exceeding five hundred dollars; and every prisoner who shall actually escape as aforesaid, shall, after his return to such prison, be imprisoned for as long a time as remained unexpired of his former sentence, at the time of such escape, besides such further term of imprisonment as aforesaid.

Neglect by public officers.

SEC. 25. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor.

Certain acts misdemeanors.

SEC. 26. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition, or in any other section or statute, the doing of such act shall be deemed a misdemeanor.

Punishment for misdemeanor.

SEC. 27. Every person who shall be convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

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OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION 1. If any persons, to the number of twelve or more, being armed with clubs, or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, shall be unlawfully, riotously, or tumultuously assembled in any city, township, or village, it shall be the duty of the mayor and each of the aldermen of such city, the supervisor of such township, the president and each of the trustees or members of the common council of such village, and of every justice of the peace, living in such city, township or village, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the people of this state, to command all the persons so assembled immediately and peaceably to disperse.

Unlawful assemblies, how suppressed.
10 Mass., 518.

SEC. 2. If the persons so assembled shall not, upon being so commanded, thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers, to command the assistance of all persons there present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded against for their offences according to law.

1b.

SEC. 3. If any person present, being commanded by any of the magistrates or officers aforesaid, to aid and assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, or when required by any such magistrate or officer to depart from the place of such riotous or unlawful assembly, shall refuse or neglect so to do, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted and punished accordingly.

Refusal to aid officer to disperse.

SEC. 4. If any mayor, alderman, supervisor, president, trustee or member of a common council, justice of the peace, sheriff, or deputy sheriff, having notice of any such riotous or tumultuous and unlawful assembly as is mentioned in this chapter, in the city, township or village in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding three hundred dollars.

Neglect of officers to suppress mobs.

SEC. 5. If any persons, who shall be so riotously or unlawfully assembled, and who shall have been commanded to disperse, as before provided, shall refuse or neglect to disperse, without unnecessary delay, any two of the magistrates or officers before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Use of force to quell mobs.

SEC. 6. Whenever an armed force shall be called out in the manner provided by law for the purpose of suppressing any tumult or riot,

Armed force, who to obey.

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or to disperse any body of men acting together by force, and with intent to commit any felony, or to offer violence to persons or property, or with intent, by force or violence, to resist or oppose the execution of the laws of this state, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county, and also such further orders as they shall there receive from any two of the magistrates or officers mentioned in the first section of this chapter.

Officers guiltless if death ensue; riotors severally responsible.

SEC. 7. If, by reason of any of the efforts made by any two or more of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or any other persons there present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons assisting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order, or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid or assist the said magistrates or officers, shall be held answerable therefor.

Riotously destroying dwelling house or other property.

SEC. 8. If any of the persons so unlawfully assembled, shall demolish, pull down or destroy, or shall begin to demolish, pull down or destroy any dwelling house or any other building, or any ship or vessel, he shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year, and shall be answerable to any person injured, to the full amount of the damage, in an action of trespass.

Inciting Indians to violate treaty, &c.
1841, p. 138.

SEC. 9. If any person shall incite, or attempt to incite, any Indian nation, tribe, chief or individual, to violate any treaty of peace with any other Indian nation or tribe, or with the United States, or to disturb the peace and tranquility existing between any Indian nation or tribe, and any other Indian nation or tribe, or the people of the United States, or shall incite or attempt to incite any Indian nation, tribe, chief or individual to violate any law of the United States, or of this state, he shall be punished by imprisonment in the state prison not more than five years, or by a fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

CHAPTER 158.

OF OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY.

Adultery, punishment of.

SECTION 1. Every person who shall commit adultery, shall be punished by imprisonment in the state prison not more three years, or by

a fine not exceeding five hundred dollars, or imprisonment in the county jail not more than one year; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and liable to the same punishment.

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SEC. 2. The term "adultery," as used in this chapter, has the same meaning as when used in reference to the causes of a divorce, and the same which it bears according to the common usage of the language.

"Adultery" defined.

SEC. 3. No prosecution for adultery shall be commenced, but on the complaint of the husband or wife; and no such prosecution shall be commenced after one year from the time of committing the offence.

By whom prosecution for adultery to be commenced, &c.

SEC. 4. If any person who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, in this state, he or she shall, except in the cases mentioned in the following section, be deemed guilty of the crime of polygamy, and shall be punished by imprisonment in the state prison not more than five years, or in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Polygamy.
1 Pick., 186.
8 do. 433.

SEC. 5. The provisions of the preceding section shall not extend to any person whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other and remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time, nor to any person who shall have good reason to believe such husband or wife to be dead, nor to any person who has been legally divorced from the bonds of matrimony, and was not the guilty cause of such divorce.

Excepted cases.

SEC. 6. If any man and woman, not being married to each other, shall lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness and lascivious behavior, or shall designedly make any open and indecent or obscene exposure of his or her person, or of the person of another, every such person shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Lewd and lascivious cohabitation, &c.
1 Mass., 8.
10 do 153.

SEC. 7. If any man shall seduce and debauch any unmarried woman, he shall be punished by imprisonment in the state prison not more than five years, or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars; but no prosecution shall be commenced under this or the last preceding section, after one year from the time of committing the offence.

Seduction; how punished.
1844, p. 6, &c.

SEC. 8. If any woman shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not more than one year.

Concealment by mother of death of bastard child

SEC. 9. Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the preceding section: and if on the trial, the jury shall acquit her of the crime of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

How charged in such case in indictment.

SEC. 10. Every person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by

Keeping house of ill-fame.

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Lease of house
so kept, void, at
option of lessor.
3 Pick., 26.

Penalty upon
person letting
dwelling house,
knowing that it is
to be used for
the purpose of
prostitution.

Obscene books
or prints.
17 Mass., 336.

Search warrant
may issue for
same : destruc-
tion of.

Incest.

Crime against
nature.

Blasphemy.

Cursing and
swearing.

imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars.

SEC. 11. Whenever the lessee of any dwelling house shall be convicted, or shall be guilty of the offence mentioned in the preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant holding over after the expiration of his term.

SEC. 12. If any person shall let any dwelling house, knowing that the lessee intends to use it as a place of resort for the purpose prostitution and lewdness, or shall knowingly permit such lessee to use the same for such purpose, he shall be punished by fine not exceeding three hundred dollars, or imprisonment in the county jail not more than six months.

SEC. 13. If any person shall import, print, publish, sell or distribute any book, pamphlet, ballad, printed paper, or other thing, containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars.

SEC. 14. Any justice of the peace may issue a search warrant, for the purpose of searching for any such obscene books, pamphlets, ballads, printed papers or other things mentioned in the preceding section, in the manner provided by law in cases of property stolen or embezzled ; and all such things, which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept so long as shall be necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the same shall be brought.

SEC. 15. All persons being within the degree of consanguinity within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not more than fifteen years, or in the county jail not more than one year.

SEC. 16. Every person who shall commit the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the state prison not more than fifteen years.

SEC. 17. If any person shall wilfully blaspheme the holy name of God, by cursing, or contumeliously reproaching God, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding fifty dollars.

SEC. 18. If any person who has arrived at the age of discretion, shall profanely curse or damn, or swear by the name of God, Jesus Christ, or the Holy Ghost, he shall, on conviction thereof before any justice of the peace, be punished by fine not exceeding five dollars, nor less than one dollar ; but no such prosecution shall be sustained



unless it shall be commenced within five days after the commission of such offence.

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SEC. 19. Every person who, on the first day of the week, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the worship of God, within the place of such meeting or out of it, shall, on conviction thereof before any justice of the peace, be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding fifty dollars.

Disturbing religious worship.
2 Mass., 163.

SEC. 20. If any person shall make or excite any disturbance or contention in any tavern, store or grocery, or at any election or other public meeting where the citizens are peaceably and lawfully assembled, he shall, on conviction before any justice of the peace, be punished by fine not exceeding twenty dollars, and imprisonment in the county jail not more than ten days.

Exciting disturbance.

SEC. 21. If any person, not being lawfully authorized so to do, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, from the place where such body may be interred or deposited, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not more than two years, or in the county jail not more than one year, or by fine not exceeding two thousand dollars.

Violation of sepulture.
10 Pick., 37.

SEC. 22. If any person shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb or other thing intended for the protection or for the ornament of any tomb, monument, gravestone or other structure before mentioned, or of any enclosure for the burial of the dead, or shall wilfully destroy, mutilate, remove, cut, break or injure any tree, shrub or plant, placed or being within any such enclosure, the person so offending shall be punished by fine not exceeding five hundred dollars, nor less than ten dollars, or by imprisonment in the county jail not more than one year.

Injuring tombs and memorials of the dead.

SEC. 23. If any person shall open or make any highway, or shall construct any rail road, turnpike or canal, or any other thing in the nature of a public easement, over, through, in or upon, such part of any enclosure, being the property of a township, city, religious society, or of any other body corporate, or of private proprietors, as may be used or appropriated for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such township, city, religious society, body corporate or proprietors respectively, shall be first obtained, he shall be punished by fine not exceeding two thousand dollars, or imprisonment in the county jail not more than one year.

Making highway, &c., through burying ground.

SEC. 24. Every person who shall cruelly beat or torture any horse, ox or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding fifty dollars.

Cruelty to animals.

SEC. 25. No person shall wilfully disturb, interrupt or disquiet any assembly of people met for religious worship, by profane discourse, by rude and indecent behavior, or by making a noise either within the place of worship, or so near it as to disturb the order and solemnity of the meeting; nor shall any person within two miles of the

Meetings for religious worship not to be disturbed.

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Liquor not to be
sold.
3 Wend., 253.

Shows, &c., not
to be exhibited.

Highways not to
be obstructed.

Penalty; proceed-
ings to collect.

Offender to be
apprehended by
peace officers
present.
10 Wend., 377.
9 do. 62

May be ordered
into custody of
official members
of church, &c.

Proceedings if
penalty not
paid or secured.

Person complain-
ed of may de-
mand jury, &c.

place where any religious society shall be actually assembled for religious worship, expose to sale or gift, any ardent or distilled liquors, wine, beer, cider, fruit, or any other article of food or merchandize, or keep open any huxter shop in any other place, inn, stand or grocery, than such as shall be or have been duly licensed, or in which such person shall have usually carried on such business; nor shall any person within the distance aforesaid, exhibit any shows or plays, unless the same shall have been duly licensed by the proper authority; nor shall any person within the distance aforesaid, promote, aid or be engaged in any racing of any animals, or in any gaming of any description; nor shall any person obstruct the free passage of any highway to any place of public worship, within the distance aforesaid.

SEC. 26. Whoever shall violate either of the provisions of the foregoing section, may be convicted summarily before any justice of the peace of the county, or any mayor, recorder, alderman or other magistrate of any city or township where the offence shall be committed, and on such conviction shall forfeit a sum not exceeding twenty-five dollars, for the benefit of the township libraries, in the township in which such conviction is had.

SEC. 27. It shall be the duty of all sheriffs and their deputies, coroners, marshals, constables and other peace officers who may be present at the meeting of any assembly for religious worship, which shall be interrupted or disturbed in the manner herein prohibited, on sight to apprehend the offender, and take him before some justice of the peace, or other magistrate authorized to convict as aforesaid, to be proceeded against according to law.

SEC. 28. All judges, mayors, aldermen, recorders and justices of the peace, within their respective jurisdictions, upon their own view of any person offending against the provisions of either of the last three preceding sections of this chapter, may order the offender into the custody of any officer in the preceding section named, or any official member of the church or society so assembled or disturbed, for safe keeping, until he shall be held to bail, or a trial for such offence be had.

SEC. 29. If any person convicted of any of the offences herein prohibited, shall not immediately pay the penalty incurred, with the costs of the conviction, or give security to the satisfaction of the officer before whom the conviction shall be had, for the payment of the said penalty and costs within twenty days thereafter, he shall be committed by warrant to the common jail of the county, until the same be paid, or for such term, not exceeding thirty days, as shall be specified in the warrant.

SEC. 30. It shall be lawful for any person complained of, for the violation of any of the provisions of either of the last two preceding sections of this chapter, before the court shall proceed to investigate the merits of the cause, to demand of such court, that he may be tried by a jury; upon such demand, it shall be the duty of such court to issue a venire to any constable of the county or marshal of the city where the case is to be tried, commanding such officer to summon the same number of jurors, and in the same manner as is provided for in the summoning of jurors before courts of justices of the peace. The said court shall proceed to impanel a jury for the trial of said cause, in the same manner, and shall be subject to all the rules

and regulations prescribed in the act providing for trial by jury in courts of justices of the peace; and the costs of suit shall be paid by the party offending in case of conviction, and shall be the same as is allowed by law in civil cases.

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Costs.

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OF OFFENCES AGAINST THE PUBLIC HEALTH.

SECTION 1. If any person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding two hundred dollars.

Selling unwholesome provisions without notice.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and the article so adulterated shall be forfeited and destroyed.

Adulterating food or liquors.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

Adulterating drugs or medicines.

SEC. 4. If any physician or other person, while in a state of intoxication, shall prescribe any poison drug or medicine, to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars.

Penalty on physician prescribing poison, &c., while intoxicated

SEC. 5. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid usually denominated poisonous, [or] any tartar emetic, without having the word "poison," and the true name thereof written or printed upon a label attached to the vial, box or parcel containing the same, shall be punished by a fine not exceeding one hundred dollars.

Penalty on apothecary, &c., for neglecting to label certain substances.

CHAPTER 160.

OF OFFENCES AGAINST THE PUBLIC POLICY.

SECTION 1. Every person who shall set up or promote within this state, any lottery for money, or shall dispose of any property real or personal, or valuable thing, by way of lottery, and every person who shall aid, either by printing or writing, or shall in any way be concerned in the setting up, managing or drawing of any such lottery, or who shall, in any house, shop or building, owned or occupied by him, or under his control, knowingly permit the setting up, managing or

Setting up or promoting lotteries. 8 Pick., 78.

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drawing of any such lottery, or the sale of any lottery ticket or share of a ticket, or any other writing, certificate, bill, token or other device, purporting or intended to entitle the holder, bearer or other person to any prize, or to any share of, or interest in, any prize to be drawn in any such lottery, or who shall knowingly suffer money or other property to be raffled for in such house, shop or building, or to be there won by throwing or using dice, or by any other game of chance, shall, for every such offence, be punished by a fine not exceeding two thousand dollars.

Selling lottery tickets or aiding therein.

SEC. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession, with intent to sell or offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, as is mentioned in the preceding section, shall be punished for every such offence, by a fine not exceeding two thousand dollars.

Case of second conviction.

SEC. 3. If any person shall, after being convicted of any offence mentioned in either of the two preceding sections, commit the like offence, or any other of the offences therein mentioned, he shall, in addition to the fine provided therefor, be further punished by imprisonment in the county jail not more than one year.

Advertising lottery tickets; exhibiting representation of lottery.
5 Pick., 41, 42.

SEC. 4. Every person who shall advertise any lottery ticket, or any share in any such ticket, for sale, either by himself or by another person, or who shall set up or exhibit, or shall devise and make for the purpose of being set up and exhibited, any sign, symbol or any emblematic or other representation of a lottery, or of the drawing thereof, or in any way indicating where a lottery ticket or a share thereof, or any such writing, certificate, bill, token or other device before mentioned, may be purchased or obtained, or shall in any way invite or entice, or attempt to entice any other person to purchase or receive the same, he shall be punished for every such offence, act or attempt, by a fine not exceeding one hundred dollars.

CHAPTER 161.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

Accessories before the fact to felony punished same as principals.

SECTION 1. Every person who shall be aiding in the commission of any felony, or shall be accessory thereto before the fact, by counseling, hiring, or otherwise procuring such felony to be committed, shall be punished in the same manner which is or shall be prescribed for the punishment of the principal felon.

Accessories before the fact, how indicted.
16 Mass., 423.

SEC. 2. Every person who shall counsel, hire or otherwise procure any felony to be committed, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the principal felon, or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice, and in the last mentioned case, may be punished in the same manner as if convicted of being accessory before the fact.

SEC. 3. Any person charged with the offence mentioned in the pre-

ceding section, may be indicted, tried and convicted in the same county where the principal might be indicted and tried, although the offence of counseling, hiring or procuring the commission of such felony, may have been committed on the high seas, or on any other navigable waters, or on land, either within or without the limits of this state.

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Further provisions relative to the same.

SEC. 4. Every person not standing in the relation of husband or wife, parent or grand parent, child or grand child, brother or sister, by consanguinity or affinity, to the offender, who, after the commission of any felony, shall harbor, conceal, maintain or assist any principal felon, or accessory before the fact, or shall give such offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the state prison not more than seven years, or in the county jail not more than one year, or by fine not exceeding one thousand dollars.

Punishment of person not relative, for aiding escape of felon.

SEC. 5. Every person who shall have become an accessory after the fact to any felony, may be indicted, convicted and punished, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, by any court having jurisdiction to try the principal felon, and either in the county where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

How such person tried.

SEC. 6. Any offence committed on the boundary of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed, and may be prosecuted and punished in either county.

Offence on boundary of two counties.

SEC. 7. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county.

Death from injury in another county.

SEC. 8. If any such mortal wound shall be given, or other violence or injury shall be inflicted, or poison administered on the high seas, or on any other navigable waters, or on land, either within or without the limits of this state, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Or on the high seas, &c.

SEC. 9. In any prosecution for the offence of embezzling the money, bank notes, checks, bills of exchange, or other securities for money of any person, by a clerk, agent or servant of such person, it shall be sufficient to allege generally in the indictment, an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it shall be proved that any money, bank note, check, draft, bill of exchange, or other security for money, of such person, of whatever amount, was fraudulently embezzled by such clerk, agent or servant within the said period of six months.

Embezzlement and evidence.

SEC. 10. In the prosecution of any offence committed upon or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring, or fraudulently

Ownership of property embezzled.
1 Mass., 476.
14 do. 217.

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receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on the trial, that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole or in any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

Attempts to commit crimes.

SEC. 11. Every person who shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished as follows :

1. If the offence attempted to be committed is such as is punishable with death, the person convicted of such attempt shall be punished by imprisonment in the state prison not more than ten years :

2. If the offence so attempted to be committed is punishable by imprisonment in the state prison for life, or for five years or more, the person convicted of such attempt, shall be punished by imprisonment in the state prison not more than three years, or in the county jail not more than one year :

3. If the offence so attempted to be committed is punishable by imprisonment in the state prison for a term less than five years, or by imprisonment in the county jail, or by fine, the offender convicted of such attempt shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars ; but in no case shall the punishment by imprisonment exceed one half of the greatest punishment which might have been inflicted if the offence so attempted had been committed.

Convicts before sentenced.

SEC. 12. When any person shall be convicted of any offence, and shall be duly sentenced therefor to confinement in the state prison of this state, for one year or more, and it shall be alleged in the indictment on which such conviction is had, and admitted or proved on the trial, that the convict has before been sentenced to a like punishment by any court in this state, or in any other of the United States, for a period not less than one year, he shall be sentenced to be punished by imprisonment in the state prison not more than seven years, in addition to the punishment prescribed by law for the offence of which he shall then be convicted.

Convicts twice before sentenced.

SEC. 13. When any such convict shall have been twice before sentenced to imprisonment at hard labor, for a period of not less than one year at each time, by any court in this state, or in any other of the United States, he shall be sentenced to imprisonment at hard labor for life, or for a term of not less than seven years in addition to the punishment prescribed by law for the offence of which he shall then be convicted.

Benefit of clergy, &c., abolished.

SEC. 14. The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder.

Prosecution by appeal for murder, &c., abolished.

SEC. 15. Prosecutions by appeal, for murder, manslaughter, rape, arson or other crime or offence, and trials by battle, are in all cases abolished.

How jury may find when offence consists of different degrees.

SEC. 16. Upon an indictment for any offence, consisting of different degrees, as prescribed in this title, the jury may find the accused

not guilty of the offence in the degree charged in the indictment, and may find such accused person guilty of any degree of such offence, inferior to that charged in the indictment, or of an attempt to commit such offence.

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SEC. 17. When a defendant shall be acquitted or convicted upon any indictment for an offence, consisting of different degrees, as prescribed in this title, he shall not thereafter be tried or convicted for a different degree of the same offence; nor shall he be tried or convicted for any attempt to commit the offence charged in the indictment, or to commit any degree of such offence.

Defendant once acquitted, &c., not to be tried thereafter for a different degree of the same offence.

SEC. 18. The term "felony," when used in this title, or in any other statute, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished by death, or by imprisonment in the state prison.

"Felony" defined

SEC. 19. The term "felonious," when used in any statute, shall be construed as synonymous in meaning with the word "criminal," and the term "feloniously," when so used, as synonymous in meaning with the word "criminally."

"Felonious" and "feloniously" defined.

SEC. 20. The term "personal property," as used in this title, shall be construed to mean goods, chattels, effects, evidences of debt, of rights in action, and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, transferred, increased, defeated, discharged or diminished.

"Personal property" defined.

SEC. 21. The term "property," as used in this title, includes personal property as defined in the preceding section, and also every estate, interest and right in lands, tenements and hereditaments.

"Property" defined.

SEC. 22. Every person who shall commit any indictable offence at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be punished by imprisonment in the county jail not more than two years, or by fine not exceeding two thousand dollars, or both, in the discretion of the court.

Offences indictable at common law, how punished when no other provision is made, &c.
1840, p. 45, § 8.

TITLE XXXI.

OF PROCEEDINGS IN CRIMINAL CASES.

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- Chapter 162. Of Proceedings to prevent the Commission of Crime.
 Chapter 163. Of the Arrest and Examination of Offenders, commitment for Trial and taking Bail.
 Chapter 164. Of Indictments and Proceedings before Trial.
 Chapter 165. Of Trials in Criminal Cases.
 Chapter 166. Of new Trials and Exceptions in Criminal Cases.
 Chapter 167. Of Coroners' Inquests.
 Chapter 168. Of Judgments in Criminal Cases and the Execution thereof.
 Chapter 169. Of Fees of Officers and Ministers of Justice in Criminal Cases.
 Chapter 170. Miscellaneous Provisions concerning Proceedings in Criminal Cases.
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CHAPTER 162.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIME.

Officers authorized to keep the peace.

SECTION 1. The justices of the supreme court, judges of county courts, circuit court commissioners, all mayors and recorders of cities, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, in the manner provided in this chapter.

Complaint, how made.

SEC. 2. Whenever complaint shall be made in writing and on oath, to any such magistrate, that any person has threatened to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath, to reduce such examination to writing, and to cause the same to be subscribed by the parties so examined.

Arrest.

SEC. 3. If it shall appear from such examination, that there is just reason to fear the commission of any such offence, such magistrate shall issue a warrant under his hand, directed to the sheriff or any constable of the county, reciting the substance of the complaint, and commanding him forthwith to apprehend the person so complained of, and bring him before such magistrate.

Trial, recognition.
 4 Mass., 497.
 8 do., 73.
 2 B. & A., 278.

SEC. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of

this state, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding one year, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought by law to be held to answer at such court.

SEC. 5. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Party, when discharged.

SEC. 6. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, during the period for which he was required to give security, or until he shall so recognize; stating in the warrant the cause of commitment, with the sum and the time for which such security was required.

Refusing to recognize, to be committed.

SEC. 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of the prosecution, who shall thereupon be answerable to the magistrate and the officer (*officers*) for their fees, as for his own debt.

Complainant, when to pay costs.

SEC. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged.

Payment of cost in other cases.

SEC. 9. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, on giving the recognizance to keep the peace required by such order, appeal to the circuit court for the same county.

Appeal allowed.

SEC. 10. The justice from whose order an appeal is taken, shall require such witnesses as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

Witnesses to recognize.

SEC. 11. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum, and for such time, not exceeding one year, as the court shall think proper, and may also make such order in relation to the costs of prosecution, as may be deemed just.

Court may affirm order of justice, or discharge appellant, &c.

SEC. 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the justice, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

Recognizance, when to remain in force.

SEC. 13. Any person committed for not finding sureties, or refusing to recognize, as required by the court or magistrate, may be discharged by any judge, circuit court commissioner or justice of the peace, on giving such security as was required.

Person committed how discharged.

SEC. 14. Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the clerk of the circuit court for the county, within twenty days after the taking thereof, and on or before the next term of such court, and shall be filed by such clerk.

Recognizance to be transmitted to clerk of court.

**TITLE XXXI.
CHAPTER 163.**

Breach of peace
in presence of
magistrate, &c.

Person going
armed to find su-
reties for the
peace.

Court may remit
part of penalty.
7 Mass., 397.

Surety may sur-
render his prin-
cipal, effect of
surrender.

SEC. 15. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, for a term not exceeding six months, and in case of refusal, may be committed as before directed.

SEC. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

SEC. 17. Whenever upon a suit brought on any recognizance entered into in pursuance of this chapter, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

SEC. 18. Any surety in a recognizance to keep the peace, shall have the same authority and right to take and surrender his principal as in other criminal cases, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace or circuit court commissioner for the residue of the term, and shall thereupon be discharged.

CHAPTER 163.

OF THE ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL AND TAKING BAIL.

What officers
may issue pro-
cess for the arrest
of offenders, &c.

SECTION 1. For the apprehension of persons charged with offences, excepting such offences as are cognizable by justices of the peace, the justices of the supreme court, judges of the county courts, circuit court commissioners, mayors and recorders of cities, and all justices of the peace, shall have power to issue process and to carry into effect the provisions of this chapter.

Complainant, &c.
to be examined.

SEC. 2. Whenever complaint shall be made to any such magistrate, that a criminal offence, not cognizable by a justice of the peace, has been committed, he shall examine on oath the complainant, and any witnesses who may be produced by him.

Proceedings if it
appear that an
offence has been
committed.

SEC. 3. If it shall appear from such examination, that any criminal offence, not cognizable by a justice of the peace, has been committed, the magistrate shall issue a warrant, directed to the sheriff or any constable of the county, reciting the substance of the accusation, and

commanding him forthwith to take the person accused of having committed such offence, and to bring him before such magistrate to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named.

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SEC. 4. If any person against whom a warrant shall be issued for an alleged offence committed within any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged in any county of this state, and for that purpose may command aid, and may exercise the same authority as in his own county.

Where warrant may be executed

SEC. 5. In all cases where the offence charged in the warrant is not punishable with death, or imprisonment in the state prison, and not cognizable by a justice of the peace, if the arrest shall be made in any other county than that where the offence is charged to have been committed, and if the person arrested shall request that he may be brought before a magistrate of the county in which the arrest was made, it shall be the duty of the officer or person arresting him, to carry such prisoner before a magistrate of that county.

When prisoner may be brought before magistrate of county where arrest is made.

SEC. 6. Such magistrate may take from the person arrested, a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be held in the county where the offence shall be alleged to have been committed, and the party arrested shall thereupon be liberated.

Magistrate may take from person arrested recognizance, &c.

SEC. 7. Such magistrate shall certify on the warrant, the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay, to the clerk of the court before which the accused was recognized to appear.

Certificate of magistrate on warrant; to whom recognizance to be delivered.

SEC. 8. If such magistrate refuse to let to bail the person so arrested and brought before him, or if no sufficient bail be offered, or the offence be not bailable by such magistrate, or not cognizable by a justice of the peace, the person having him in charge shall take him before the magistrate who issued the warrant, or before some other magistrate of the same county, as in the next section prescribed.

Duty of officer if prisoner not bailed.

SEC. 9. Persons arrested under any warrant issued for any offence not cognizable by a justice of the peace, shall, where no provision is otherwise made, be brought before the magistrate who issued the warrant; or if he be absent, or unable to attend, before some other magistrate of the same county: and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

When persons arrested to be brought before magistrate issuing warrant.

SEC. 10. Any magistrate, for an offence not cognizable by a justice of the peace, may adjourn an examination or trial pending before himself from time to time, as may be necessary, without the consent of the defendant or person charged, and to the same or a different place in the county, as he shall deem necessary; and in such case, the party may, in the mean time, be committed either to the county jail or to the custody of the officer by whom he was arrested, or of any other officer; or unless he shall be charged with a capital offence or the crime of murder in the first degree, he may be recognized in a sum and with sureties to the satisfaction of the magistrate, for his appearance before such magistrate for such further examination.

Examination may be adjourned, disposition of defendant.

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may be commit-
ted, &c.

SEC. 11. The person accused may be committed as provided in the preceding section, by the verbal order of the magistrate, or by a warrant under his hand, stating that he is committed for such further examination on a day to be named in the warrant; and on the day therein specified, he may be brought before the magistrate by his verbal order to the same officer by or to whose custody he was committed, or by an order in writing to a different officer.

Default to appear.
duty of magis-
trate.

SEC. 12. If the person recognized according to the foregoing provisions, shall not appear before the magistrate at the time appointed for his further examination, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the circuit court for the county, and the like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before such court.

Manner of con-
ducting examina-
tion.

SEC. 13. The magistrate before whom any person is brought, upon a charge of having committed an offence, and not cognizable by a justice of the peace, shall proceed as soon as may be, to examine the complainant, and the witnesses in support of the prosecution, on oath, in the presence of the prisoner, in regard to the offence charged, and in regard to any other matters connected with such charge, which such magistrate may deem pertinent.

Ib.

SEC. 14. After the testimony in support of the prosecution has been given, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination of the witnesses in support of the prosecution.

Ib.

SEC. 15. The magistrate, while examining any witness, may exclude from the place of examination all the witnesses who have not been examined; and he may also, if requested, or if he see cause, direct the witnesses, whether for or against the prisoner, to be kept separate, so that they cannot converse with each other, until they shall have been examined.

Testimony to be
reduced to writ-
ing.

SEC. 16. The evidence given by the several witnesses examined, shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively.

Prisoner when
to be discharged.

SEC. 17. If it shall appear to the magistrate, upon the examination of the whole matter, either that no offence has been committed, or that there is not probable cause for charging the prisoner therewith, he shall discharge such prisoner.

When to be bail-
ed or committed.

SEC. 18. If it shall appear that an offence not cognizable by a justice of the peace has been committed, and that there is probable cause to believe the prisoner guilty thereof, and if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken, and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed to prison for trial.

Complainant and
witnesses to re-
cognize.

SEC. 19. When the prisoner is admitted to bail, or committed by the magistrate, such magistrate shall bind by recognizance, the complainant, and all the material witnesses against such prisoner, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer, and it shall be competent, in all cases contemplated in this section, for any magistrate in the county where any such offence is alleged to have been committed, to issue process to compel the attendance of any witness or witness

es, before him, at any time in vacation or between the terms of the court having cognizance of the offence, for the purpose of compelling such witnesses to enter into any recognizance required by the provisions of this section.

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SEC. 20. If the magistrate shall be satisfied by due proof, that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with one or more sureties as may be deemed necessary, for his appearance at court.

When with sureties.

SEC. 21. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness.

Recognizances of married women and minors.

SEC. 22. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be discharged according to law.

Refusal to recognize; commitment.

SEC. 23. Any justice of the supreme court, circuit court commissioner, or any judge of any county court for any county, on application of any prisoner committed for any bailable offence, and after due notice to the prosecuting attorney for the county, may inquire into the case, and admit such prisoner to bail; and any person committed for not finding sureties to recognize for him, may be admitted to bail by any of the said officers.

Prisoners by whom let to bail.

SEC. 24. Any magistrate, to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more other magistrates of the same county, and they may together execute the powers and duties conferred upon such magistrates respectively by this chapter; but no fees shall be taxed for such associates.

Magistrate to whom complaint is made, may associate with himself one or more other magistrates.

SEC. 25. All examinations and recognizances, taken by any magistrate, pursuant to any of the provisions of this chapter, shall be forthwith certified and returned by him to the clerk of the court before which the party charged is bound to appear, and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith by rule of the court, and in case of disobedience, he may be proceeded against by attachment as for a contempt.

Examination and recognizances to be certified, returned, &c.

SEC. 26. Officers before whom persons charged with crime shall be brought, shall have power to let to bail as follows:

When prisoners charged with crime may be let to bail. Const. art. 1, §12.

1. Any justice of the supreme court, or a circuit court commissioner, or any judge of any county court for any county, in all cases, except for capital offences, or for murder in the first degree, when the proof is evident or the presumption great:

2. Any judge of the county court for any county, in all cases where the punishment for the offence charged shall be less than imprisonment for life in the state prison:

3. Any justice of the peace, or mayor, or recorder of a city, in all cases where the punishment for the offence charged shall not be more than ten years imprisonment in the state prison.

SEC. 27. The several circuit courts shall have power to let to bail any person committed, in all cases in which a justice of the supreme court is authorized to let such person to bail.

In what cases circuit courts may let to bail.

SEC. 28. When any person brought before a justice of the peace shall be committed to prison, or shall be under recognizance to an

Commitments superseded and recognizances

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discharged, on
acknowledgment
of satisfaction.

swer to any charge of assault and battery, or other misdemeanor, for which the injured party shall have a remedy by civil action, if the injured party shall appear before the magistrate having cognizance of the offence, who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of the costs which have accrued, discharge the accused or the recognizance, or supersede the commitment, by an order under his hand; and may, in like manner, discharge all recognizances, and supersede the commitment of all witnesses in the case.

Order for dis-
charge of recog-
nizance where
filed, and order
superseeding com-
mitment, to
whom delivered,
&c.

SEC. 29. Every such order discharging any recognizance, shall be filed in the office of the clerk of the county; and every such order superseding the commitment of the offender or any witness, shall be delivered to the keeper of the jail where he shall be confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Effect of acknow-
ledgment of injur-
ed party in case
of indictment
found, &c.

SEC. 30. If an indictment shall be found on any such charge, the injured party may in like manner appear in the court where such indictment is pending, and acknowledge satisfaction for the injury and damages sustained by him; and such court may, in its discretion, on payment of the costs incurred, order that no further proceedings be had on such indictment, and may discharge the defendant therefrom; which order shall operate as a perpetual stay of all further proceedings on such indictment.

The three last
preceding sec-
tions qualified.

SEC. 31. The provisions of the three last sections shall not extend to any charge or indictment for any assault and battery or other misdemeanor, charged to have been committed by or upon any officer or minister of justice, whilst in the execution of the duties of his office, or riotously, or with an intent to commit a felony.

Action upon re-
cognizance not
barred by neg-
lect to note de-
fault of princi-
pal, &c.
2 Greenl., 62.
9 Maes., 530.
12 do. 1.
16 do. 447.

SEC. 32. No action brought upon any recognizance entered into in any criminal prosecution, either to appear and answer, or to testify in any court, shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any neglect or omission to note or record the default of any principal or surety, at the time when such default shall happen, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witnesses (*witness*) was bound to appear, and that the court or a magistrate before whom it was taken, was authorized by law to require and take such recognizance.

CHAPTER 164.

OF INDICTMENTS AND PROCEEDINGS BEFORE TRIAL.

Court may dis-
charge grand ju-
rors in certain
cases; deficien-
cies, how sup-
plied.

SECTION 1. Any court in which a grand jury may be sitting, may discharge any of the grand jurors for intoxication or other gross misconduct; and in case of such discharge, or in case of the sickness, death or non-attendance of any grand juror, after he shall have been sworn, the court may cause another juror to be summoned from

among the by-standers, or inhabitants of the city, township or village, having the qualifications required by law, and to be sworn and serve in his stead.

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SEC. 2. The clerk of the court shall prepare an alphabetical list of all the persons returned as grand jurors, and when the jury is to be impaneled, the two persons first named on the list, shall be first called, and the following oath shall be administered to them: "You as grand jurors of this inquest, for the body of this county of _____, do solemnly swear, that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; your own counsel, and the counsel of the people, and of your fellows, you shall keep secret; you shall present no person for envy, hatred or malice, neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God."

Grand jurors,
how impanel-
ed and sworn.

SEC. 3. The other grand jurors shall then be called in such divisions as the court may deem proper, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you, and each of you, on your part, shall well and truly observe and keep; so help you God."

SEC. 4. Any person returned as a grand juror, shall be allowed to make affirmation, substituting the word "affirm," instead of the word "swear;" and also the words, "this you do under the pains and penalties of perjury," instead of the words "so help you God."

Affirmation may
be substituted
for oath.

SEC. 5. There shall not be less than sixteen persons sworn on any grand jury; and after such jurors have been impaneled, and have received their charge from the court, they shall retire with the officer appointed to attend them, and before they proceed to discharge the duties of their office, they shall elect by ballot one of their number to be foreman, and give notice thereof to the court, and the clerk shall record the same.

Number of per-
sons to be sworn
as grand jury;
election of fore-
man.

SEC. 6. The foreman elected by the grand jury in the manner provided in the preceding section, shall be foreman during the whole time they are required to serve; but in case of his death or absence, or if he shall be discharged or excused before the grand jury shall be dismissed, another of such jurors shall be elected foreman for the residue of such time of service.

Foreman to serve
until discharged;
in case of his
death, &c., another
to be elected.

SEC. 7. A person held to answer to any criminal charge, may object to the competency of any one summoned to serve as a grand juror, on the ground that he is the prosecutor or complainant upon any charge against such person; and if such objection be established, the person so summoned shall be set aside.

Person held to
answer, &c. may
object to competency
of juror in
certain cases.

SEC. 8. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other case than that specified in the preceding section.

When array not
to be challenged

SEC. 9. The foreman of every grand jury, the attorney general, and the prosecuting attorney or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations, in the manner prescribed by law, to witnesses who shall appear before such jury, for the purpose of testifying in any matter of which they may have cognizance; and the foreman shall return to the court, or deliver to the prosecuting officer, a list of all the witnesses sworn before the grand jury, in each case in which an indictment shall be found.

Who may ad-
minister oaths,
&c.

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Jury may ap-
point clerk, &c.

Grand jury dis-
missed before
adjournment of
court may be
summoned again.

Secrecy of ju-
rors and officers.

Upon complaint
for perjury, &c.,
jurors may be
required to testi-
fy, &c.

Duty of prosecu-
ting attorney.

May issue sub-
pœnas, &c.

May appear be-
fore grand jury,
&c.

Bill not to be
found without
concurrence of
12 jurors, &c.

Limitation of
criminal prose-
cutions.

Indictments to be
presented to
court by foreman;
to be filed, &c.

SEC. 10. The grand jury may appoint one of their number to be their clerk, to preserve minutes of their proceedings and of the evidence given before them; which minutes shall be delivered to the prosecuting officer, when so directed by the grand jury.

SEC. 11. When the grand jury attending any court shall have been dismissed before the court is adjourned without day, they may be summoned to attend again, in the same term, at such time as the court shall direct, for the despatch of any business that may come before them.

SEC. 12. No grand juror or officer of the court shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

SEC. 13. Members of the grand jury may be required by any court to testify, whether the testimony of a witness examined before such jury is consistent with, or different from, the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person, upon complaint against such person for perjury, or upon his trial for such offence; but in no case can a member of a grand jury be obliged or allowed to testify or declare in what manner he or any other member of the jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

SEC. 14. Whenever required by the grand jury, it shall be the duty of the prosecuting attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter.

SEC. 15. The prosecuting attorney and other prosecuting officers may, in all cases, issue subpœnas for witnesses to appear and testify on behalf of the people of this state; and the subpœna, under the hand of such officer, shall have the same force, and be obeyed in the same manner, and under the same penalties, as if issued by the clerk or any magistrate.

SEC. 16. The prosecuting attorney of the county, or other prosecuting officer, shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them; but no prosecuting officer, constable, or any other person, except grand jurors, shall be permitted to be present during the expression of their opinions, or the giving of their votes, upon any matter before them.

SEC. 17. No indictment can be found without the concurrence of at least twelve grand jurors; and when so found, and not otherwise, the foreman of the grand jury shall certify thereon, under his hand, that the same is a true bill.

SEC. 18. An indictment for the crime of murder may be found at any period after the death of the person alleged to have been murdered: all other indictments shall be found and filed within six years after the commission of the offence; but any period during which the party charged was not usually and publicly resident within this state, shall not be reckoned as part of the six years.

SEC. 19. Indictments found by a grand jury, with the names of the complainant and all the witnesses endorsed on the back thereof, shall be presented by their foreman, in their presence, to the court, and

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shall there be filed, and remain as public records; but such as are found against any person for a felony, not being in actual confinement, shall not be open to the inspection of any person except the attorney general or prosecuting attorney, until the defendant therein shall have been arrested.

When person held in prison, &c., to be discharged.

SEC. 20. Any person held in prison on any charge of having committed a crime, shall be discharged if he be not indicted before the end of the second term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court that the witnesses on the part of the people have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident, and except in the case provided for in the next section.

Insanity of prisoner.

SEC. 21. When any person held in prison on a charge of having committed an indictable offence, shall not be indicted by the grand jury by reason of insanity, such jury shall certify that fact to the court; and thereupon, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be retained in prison until the further order of the court, otherwise he shall be discharged.

Person indicted entitled to copy of indictment.

SEC. 22. Every person indicted for any offence, who shall have been arrested upon process issued upon such indictment, or who shall have duly entered into recognizance to appear and answer to such indictment, shall, on demand, be entitled to a copy of the indictment and of all endorsements thereon.

Proa. attorney not to enter nol. pros. without leave of court.

SEC. 23. It shall not hereafter be lawful for any prosecuting attorney to enter a nolle prosequi upon any indictment, or in any other way to discontinue or abandon the same, without the leave of the court having jurisdiction to try the offence charged, entered in its minutes.

Who may issue warrant for arrest of person indicted.

SEC. 24. A warrant for the arrest of any person indicted, may be issued by the court to which the indictment shall be presented, or by any justice of the supreme court, or judge of the court for the county in which such indictment shall be found, either in vacation or during the sitting of any such court; but such warrant shall not be issued by any other officer.

To whom warrant to be directed.

SEC. 25. Every warrant so issued shall be directed to the sheriff or any constable of the county in which the indictment shall be found, and may be executed in any part of this state.

Clerk to issue subpoenas for defendant's witnesses.

SEC. 26. The clerk of any county in which an indictment shall be found, upon the application of the defendant, and without requiring any fees, shall issue subpoenas, as well during the sitting of any court as in vacation, for such witnesses as the defendant may require, whether residing in or out of the county.

Disobedience to subpoena, how punished.

SEC. 27. Disobedience to any subpoena issued pursuant to the foregoing provisions, shall be punished in the same manner, and upon the like proceedings, as provided by law in other cases; and the person guilty of such disobedience shall be liable to the party at whose instance such subpoena issued, in the same manner, and to the like extent as in cases of subpoenas issued in any civil suit.

Tender of fees to witness not necessary.

SEC. 28. It shall not be necessary to pay or tender any fees whatever, to any witness subpoenaed on the part of the people of this state, in support of any prosecution, or to any witness subpoenaed on the part of any defendant in any indictment; but such witness shall be bound to attend, as if the fees allowed by law to witnesses in civil actions had been duly paid to him.

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Court to order
plea of not guilty
when person ar-
raigned refuses
to plead.

SEC. 29. When any person shall be arraigned upon an indictment, it shall not be necessary, in any case, to ask him how he will be tried; but if, on being so arraigned, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment.

Prisoner when to
be tried.
15 Mass., 277.

SEC. 30. Every person held in prison upon an indictment, shall, if he require it, be tried at the next term of the court after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court, that the witnesses on behalf of the people have been enticed or kept away, or are detained and prevented from attending court by sickness, or some inevitable accident.

Receiver of stolen
goods, &c.,
where may be
indicted.

SEC. 31. In the cases where any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted in any county where he received or had such property, notwithstanding such theft was committed in another county.

Persons stealing
property in one
county and bring-
ing it into another,
where indict-
able.

SEC. 32. When any property shall be stolen in one county and brought into another, the offender may be indicted, tried and convicted in the county into which such stolen property was brought, in the same manner as if such property had been originally stolen in that county; and when such property shall have been taken by burglary or robbery, the offender may be indicted, tried and convicted of said burglary or robbery in the county into which such property was brought, in the same manner as if such burglary or robbery had been committed in that county.

Plea in abatement
&c., not to be re-
ceived unless ver-
ified.

SEC. 33. No plea in abatement, or other dilatory plea to the indictment, shall be received by any court, unless the party offering such plea shall prove the truth thereof by affidavit, or by some other evidence.

Certain omis-
sions, &c., not to
affect validity of
indictment. &c.

2 Mass., 116.

7 do., 9.

11 do., 279.

5 Pick., 44.

6 Greenl., 148.

5 Wend., 19.

8 do., 636.

12 do., 425.

SEC. 34. No indictment shall be quashed or deemed invalid, nor shall the trial, judgment or other proceedings thereon be affected,

1. By reason of the omission or mis-statement of the occupation, estate or degree of the defendant, or of the name of the city, township, or county of his residence: or,

2. By reason of the omission of the words "feloniously," or of the words "with force and arms," or any words of similar import: or,

3. By reason of omitting to charge any offence to have been committed contrary to the form of the statute or statutes: or,

4. By reason of any other defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

When court may
grant commis-
sion to take tes-
timony.

SEC. 35. When an issue of fact shall be joined upon any indictment, the court in which the same is pending may, on application of the defendant, grant a commission to examine any material witnesses residing out of this state, in the same manner as in civil cases; and the prosecuting officer may, if he shall see fit, join in such commission, and name any material witnesses to be examined on the part of the people.

Execution, &c.
of commission.

SEC. 36. Interrogatories to be annexed to such commission shall be settled, and such commission shall be issued, executed and returned, in the manner prescribed by law in respect to commissioners (*commissions*) in civil cases, and the depositions taken thereon and

returned, shall be read in the same cases, and with the like effect in all respects, as in civil suits. TITLE XXXI.
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SEC. 37. After an indictment shall be found against any defendant, he may have witnesses examined in his behalf conditionally, on the order of a judge of the court in which the indictment is pending, in the same cases, upon the like notice to the prosecuting attorney, and with the like effect, in all respects, as in civil suits. Person indicted may have witnesses examined conditionally, &c.

CHAPTER 165.

OF TRIALS IN CRIMINAL CASES.

SECTION 1. Issues of fact joined upon any indictment, shall be tried by a jury, drawn and returned in the manner provided by law for the trial of issues of fact in civil cases. Issues of fact, how tried.

SEC. 2. No member of the grand jury which has found an indictment, shall be put upon the jury for the trial of such indictment, if challenged for that cause by the defendant. When grand juror not to sit up on petit jury.

SEC. 3. Every person indicted for an offence, shall, when the jury is impaneled for his trial, be entitled to the same challenges that are by law allowed to defendants in civil causes. Challenges.

SEC. 4. The attorney general, or any other officer prosecuting an indictment, shall be entitled to the same challenges, on behalf of the people, that are allowed by law to parties in civil causes. Ib.

SEC. 5. Any person who is put on trial for an offence punishable with death, or for murder in the first degree, shall be allowed to challenge, peremptorily, thirty of the persons returned as jurors, and no more. Ib. in case of trial for capital offence, &c.

SEC. 6. No person whose opinions are such as to preclude him from finding any defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror on the trial of any indictment for such an offence. Person holding certain opinions incompetent to sit on jury in case of capital offence.

SEC. 7. The following oath shall be administered to the jurors for the trial of all criminal cases : " You shall well and truly try, and true deliverance make, between the people of this state and the prisoner at the bar, whom you shall have in charge, according to the evidence and the laws of this state ; so help you God." Oath of jurors.

SEC. 8. Any juror shall be allowed to make affirmation, substituting the words "this you do under the pains and penalties of perjury," instead of the words "so help you God." Affirmation.

SEC. 9. No person indicted for a felony shall be tried, unless personally present during the trial ; persons indicted for smaller offences may, at their own request, by leave of the court, be put on trial in their absence, by an attorney duly authorized for that purpose. Person indicted for felony to be present at trial.

SEC. 10. The court may order a view by any jury impaneled to try a criminal case, whenever such court shall deem such view necessary. Court may order view.

SEC. 11. When any prisoner indicted for an offence shall, on trial, be acquitted by the jury by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause ; When prisoner acquitted by reason of insanity, &c.

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and thereupon, if the discharge or going at large of such insane person, shall be considered manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, there to be kept until the further order of this (*the*) court; otherwise he shall be discharged.

Person acquitted,
&c. not liable for
costs.

SEC. 12. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office, or for any charge for subsistence while he was in custody.

When court may
order defendant
to be discharged
before close of
evidence.

SEC. 13. Whenever two or more persons shall be included in the same indictment, and it shall appear that there is not sufficient evidence to put any defendant on his defence, it shall be the duty of the court to order such defendant to be discharged from such indictment, before the evidence shall be deemed to be closed.

How two or
more defendants
jointly indicted
may be tried.

SEC. 14. When two or more defendants shall be jointly indicted for any felony, any one defendant requiring it shall be tried separately; and in other cases, defendants jointly indicted, shall be tried separately or jointly, in the discretion of the court.

CHAPTER 166.

OF NEW TRIALS AND EXCEPTIONS IN CRIMINAL CASES.

Court may grant
new trial.

SECTION 1. The court in which the trial of any indictment shall be had, may, at the same term, or at the next term thereafter, on the motion in writing of the defendant, grant a new trial, for any cause, for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court shall direct.

Exceptions may
be alleged, &c.

SEC. 2. Any person who shall be convicted of any offence before any court of record, considering himself aggrieved by any opinion, direction or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction or judgment, which exceptions being reduced to writing in a summary mode, and presented to the judge before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge.

Proceedings to be
stayed upon sign-
ing of exceptions
unless, &c.

SEC. 3. Upon the signing of such exceptions, all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge, that such exceptions are frivolous, immaterial, or intended only for delay, and in that case, judgment may be entered, and sentence awarded in such manner as the court shall deem reasonable, notwithstanding the allowance of such exceptions.

Report of case
when to be made
by judge.

SEC. 4. If upon the trial upon indictment of any person who shall be convicted in any court of record, any question of law shall arise, which, in the opinion of the judge, shall be so important or doubtful, as to require the opinion of the supreme court, he may, if the defendant desires it or consents thereto, report the case so far as may be necessary to present the question of law arising thereon, and transmit the same with all convenient speed to the chief justice, or one of the

associate justices of the supreme court, and thereupon all further proceedings in such court shall be stayed.

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SEC. 5. Any person who shall file exceptions, or for whose benefit a report shall be made by the judge, as is provided in the preceding sections, may, if the offence be bailable, recognize to the people of this state, in such sum as the court shall order, with sufficient sureties for his appearance at the next term of such court, and to prosecute his exceptions to effect in the supreme court, if exceptions are alleged as aforesaid, and to abide the further judgment or order of the court in the premises, in which such trial was had, and in the mean time to keep the peace and be of good behavior.

Person filing exceptions, &c. to recognize.

SEC. 6. If such person shall not so recognize, he shall be committed to prison, to await the decision of the supreme court; and in that case the clerk of the court in which the conviction was had, shall file a certified copy of the record and proceedings in the case, in the supreme court; and such court shall have jurisdiction to hear and determine the questions of law arising on such exceptions or report, and shall certify their determination to the court in which the trial was had, together with directions as to a new trial, or such other proceedings as right and justice shall require; but the proceedings herein prescribed shall not deprive any party of his writ of error, for any error or defect appearing of record.

Person neglecting to recognize, to be committed.

SEC. 7. The court in which the party so convicted and recognized shall be bound to appear as aforesaid, shall have power to continue such recognizance, or require a new recognizance, with further or other sureties until the decision of the supreme court shall be had in the premises, and in default of compliance with any such requisition, such court may commit the party so convicted to close custody.

Court may continue recognizance, &c.

CHAPTER 167.

OF CORONERS' INQUESTS.

SECTION 1. Justices of the peace shall take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly or by violence, and of such persons as shall have died in prison.

Inquests on view of dead bodies, when to be taken.

SEC. 2. As soon as any justice of the peace shall have notice of the dead body of any person found or lying within the county, who is supposed to have come to his death in any manner described in the preceding section, he shall forthwith summon not less than six nor more than twelve good and lawful men of the county, to appear before him at such place as he shall appoint.

Jury, how summoned.

SEC. 3. When six or more of the jurors who have been summoned appear, the justice of the peace shall call over their names, and there, in view of the dead body, shall administer to them an oath or affirmation in substance as follows: " You do solemnly swear, (or affirm, as the case may be,) that you will diligently inquire, in behalf of the people of this state, when, in what manner, and by what means, the person, whose body lies here dead, came to his death, and that you

Jurors, how impaneled and sworn.

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Witnesses, how
summoned; at-
tendance, how
enforced, &c.

will make a true inquest thereof according to your knowledge, and such evidence as shall be laid before you."

SEC. 4. The justice of the peace may issue subpoenas for witnesses returnable forthwith or at such time and place as he shall therein direct; and the attendance of the persons served with such subpoena may be enforced in the same manner, and they shall be subject to the same penalties, as if they had been served with a subpoena in behalf of the people of this state, to attend a justice's court; provided, that in all such cases it shall be lawful for the magistrate taking any such inquest, to require, by subpoena, the attendance of a competent physician or surgeon for the purpose of making a post-mortem examination, and of testifying as to the result of the same; and the amount of compensation for such attendance and services, shall be audited and allowed by the board of supervisors of the proper county.

Oath of witnesses.

SEC. 5. An oath or affirmation to the following effect shall be administered to each witness by the justice of the peace: "You do solemnly swear (or affirm) that the evidence you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."

Testimony of
witnesses to be
reduced to writing.

SEC. 6. In all cases where any murder or manslaughter is supposed to have been committed, the testimony of all witnesses examined before the inquest, shall be reduced to writing by the justice of the peace, or some other person by his direction, and subscribed by the witnesses.

Inquisition, how
taken.

SEC. 7. The jury, upon the inspection of the dead body, and after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the justice of the peace, their inquisition under their hands, in which they shall find and certify, when, in what manner, and by what means the deceased came to his death, and his name, if known, together with all the material circumstances attending his death; and if it appear that he came to his death by unlawful means, the jurors shall forthwith state who was guilty, either as principal or accessory, or were in any manner the cause of his death, if known.

Form of inquisition.

SEC. 8. Such inquisition, to be called a coroner's inquest, may be in substance in the following form:

County of _____, ss.

An inquisition taken at _____, in said county, on the _____ day of _____, before _____, one of the justices of the peace of the said county, upon the view of the body of _____, (or a person,) there lying dead, by the oaths of the jurors whose names are hereto subscribed, who being sworn to inquire in behalf of the people of this state, when, in what manner, and by what means the said _____ (or person) came to his death, upon their oaths do say, (then insert when, where, in what manner, and by what means, persons, weapons or instruments he was killed or came to his death.) In testimony whereof the said justice of the peace and the jurors of this inquest, have hereunto set their hands the day and year aforesaid.

Duty of justice
in case of murder, &c.

SEC. 9. If the jury find that any murder, manslaughter or assault had been committed upon the deceased, the justice of the peace shall bind over, by recognizance, such witnesses as he shall think necessary, to appear and testify at the next court to be held in the same county, at which an indictment for such offence may be found; and he shall also return to the same court the inquisition, written evidence,

and all recognizances and examinations by him taken, and may commit to the jail of the county, any witness who shall refuse to recognize in such manner as he shall direct.

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Sec. 10. If any person charged by the inquest with having committed any such offence, shall not be in custody, the justice of the peace shall have power to issue process for his apprehension, and such warrant shall be made returnable before him or any other magistrate or court having cognizance of the case, who shall proceed thereon in the manner that is required of magistrates in like cases.

Justice may issue process for arrest of person charged.

Sec. 11. When any justice of the peace shall take an inquest upon the view of the dead body of a stranger, or being called for that purpose, shall not think it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be decently buried; and if the justice of the peace shall certify that to the best of his knowledge and belief the person found dead was a stranger not belonging to this state, the expenses of burial, with the justice's fees, and all the expenses of the inquisition, if any was taken, shall be paid to the justice of the peace from the state treasury, the account of such expenses and fees being first allowed by the circuit court for the county; in all other cases the expenses and fees shall be paid by the county in which the inquisition was taken.

When justice to cause body to be buried; costs, how paid.

CHAPTER 168.

OF JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

SECTION 1. Whenever any person shall be lawfully sentenced by any court to imprisonment in the state prison, or in any county jail, it shall be competent for the court awarding the sentence, to incorporate therein a provision, that the person so sentenced shall be kept in solitary confinement, or at hard labor, or both, during the term of such imprisonment, or any specific portion thereof.

When court may sentence person to solitary confinement, or hard labor.

Sec. 2. When any person shall be convicted of an offence punishable at the discretion of the court, either by fine or imprisonment in the county jail, or by a fine or imprisonment in the state prison, the court may award against such offender a conditional sentence, and order him to pay a fine, with or without the costs of prosecution, within a limited time, to be expressed in the sentence, and in default thereof, to suffer such imprisonment as is provided by law and awarded by the court.

Conditional sentences.

Sec. 3. The person against whom any such conditional sentence shall be awarded, shall be forthwith committed to the custody of an officer in court, or to the county jail, to be detained until the sentence be complied with; and if he shall not pay the fine within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Sec. 4. Whenever it is provided that an offender shall be punished by imprisonment in the county jail and a fine, such offender may, at the discretion of the court, be sentenced to be punished by such imprisonment without the fine, or by such fine without the imprisonment; and whenever it is provided that an offence shall be punished

Discretionary power of court. 1839, p. 233, § 52.

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Recognizances
to keep the
peace.

by fine or imprisonment, the court may impose both such fine and imprisonment, in its discretion.

SEC. 5. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties, in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any time not exceeding two years, and to stand committed until he shall so recognize.

Proceedings on
forfeiture.

SEC. 6. In case of a breach of the condition of any [such] recognizance, the same proceedings shall be had as are prescribed in relation to recognizances to keep the peace in other cases.

Sheriff to execute
sentence.

SEC. 7. When any person, convicted of an offence, shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or some officer in court, a transcript from the minutes of the court, of the conviction and sentence, duly certified by such clerk, which shall be sufficient authority for the sheriff to execute such sentence, and he shall execute the same accordingly.

Ib.

SEC. 8. When any convict shall be sentenced to imprisonment in the state prison, the clerk of the court before whom such conviction was had, shall make out a warrant under the seal of the court, directed to the sheriff of the county, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison, which warrant shall be delivered to such sheriff, and be obeyed by him, and shall be accompanied by a certified abstract from the minutes of the court, of such conviction and sentence as aforesaid.

Person convicted
of capital offence
to be sentenced
to hard labor in
state prison, un-
til, &c.

SEC. 9. When any person shall be convicted of any crime punishable with death, and sentenced to suffer such punishment, he shall, at the same time, be sentenced to hard labor in the state prison until such punishment of death shall be inflicted.

Person sentenced
to death not to
be executed
within one year,
&c.

SEC. 10. And no person, so sentenced and imprisoned, shall be executed in pursuance of such sentence within one year from the day such sentence of death was passed, nor until the whole record of the proceedings shall be certified by the clerk of the court in which the conviction was had, under the seal thereof, to the governor of this state, nor until a warrant shall be issued by the governor, under the great seal of the state, directed to the sheriff of the county in which the state prison may be situated, commanding the said sentence of death to be carried into execution.

Punishment of
death to be inflicted
by hanging.

SEC. 11. The punishment of death shall, in every case, be inflicted by hanging the convict by the neck until he is dead; and the sentence shall, at the time directed by the warrant, be executed within the walls of the state prison, or within the enclosed yard thereof.

Sheriff, &c., to be
present at execu-
tion—who else
may be present.

SEC. 12. The sheriff of the county shall be present at the place of execution, unless prevented by sickness or other casualty, and also two of his deputies, designated by him; and he shall request the presence of the prosecuting attorney, and twelve respectable citizens, including a surgeon or physician, and shall permit the counsel of the prisoner, and such ministers of the gospel as the criminal shall desire, and his relations, to be present, and also such officers of the prison, deputies, constables and military guard as he may see fit, but no others.

Sec. 13. Whenever a sheriff shall inflict the punishment of death upon any convict, in obedience to a warrant from the governor, he shall make return thereof under his hand with his doings thereon, to the office of [the] secretary of state, as soon as may be; and shall also transmit to the clerk of the court in which the conviction was had, an attested copy of the warrant and return thereon; and the clerk shall place the same on file with the indictment, and subjoin to the record of the sentence, a brief abstract of the sheriff's return on the warrant.

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Sheriff's return
on warrant for
execution.

CHAPTER 169.

OF THE FEES OF OFFICERS AND MINISTERS OF JUSTICE IN CRIMINAL CASES.

SECTION 1. For the following services hereafter performed, in the cases authorized by law, the officers hereinafter named shall be allowed, respectively, the fees in this chapter directed.

Fees of officers
in criminal cases

Justices of the Peace.

Sec. 2. For administering every oath, six cents; a warrant, nineteen cents; a bond or recognizance, twenty-five cents; a subpœna, six cents for each witness, not exceeding four in any one case; certifying the cause of commitment to other magistrates, or to any court, thirteen cents; a commitment for want of bail, nineteen cents; for any other services rendered by a justice in criminal proceedings, the same fees as for similar services rendered in civil proceedings.

Of justices of the
peace.

Constables.

Sec. 3. Serving a warrant or other process for the arrest of any person, issued by any magistrate or court, fifty cents; and the same fees for traveling to make such service as are allowed in civil cases; taking a defendant into custody on a mittimus, thirteen cents; conveying a person to the magistrate or court before whom he is to be brought, thirteen cents if within one mile, and for every mile more, going only, six cents; serving a subpœna, thirteen cents for each witness, and the like mileage as above provided; but mileage shall be allowed only on the distance actually and necessarily traveled.

Of constables.

The board of supervisors of each county may allow such further compensation for the service of process, and the expenses and trouble attending the same, as they shall deem reasonable; for other services in criminal cases, for which no compensation is specially provided by law, such sum as the board of supervisors shall allow.

Further compensation may be allowed.

Clerks.

Sec. 4. Swearing a witness, six cents; entering a recognizance, thirteen cents; calling and swearing a jury, nineteen cents; for other services, the same as provided in civil cases.

Of clerks.

Sheriffs.

Sec. 5. For every person committed to prison, thirty-eight cents;

Of sheriff.

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for every person discharged from prison, thirty-eight cents ; for serving a warrant or performing any other duty which may be performed by a constable, the same fees as are allowed by law to a constable for such service ; for other services not herein specially provided for, such sums as may be allowed by the board of supervisors.

General Provisions.

Fees to be county charges.

SEC. 6. The fees herein before in this chapter allowed for services, except those which are otherwise provided [for] by law, shall be county charges, and shall be audited by the board of supervisors of the county in which the services are rendered, and shall be paid in the same manner as other contingent charges of the county.

In respect to witnesses.

SEC. 7. Whenever any person shall attend any court of record as a witness in behalf of the people of this state, upon request of the public prosecutor, or upon subpoena, or by virtue of a recognizance for that purpose, and it shall appear that such person has come from any other state or territory of the United States, or from any foreign country, or that such person is poor, the court may, by an order to be entered on its minutes, direct the county treasurer of the county in which the court may be sitting, to pay to such witness such sum of money as shall seem reasonable for his expenses ; and no fees shall be allowed or paid to witnesses on the part of the people in any criminal proceeding or prosecution, except as in this section above provided.

Clerk to issue order.

SEC. 8. The clerk of the court by which such order shall be made, shall immediately make out and deliver a certified copy thereof to the person in whose favor the same is made, without any fee for such service.

County treasurer to pay.

SEC. 9. Upon the production of such certified copy to the county treasurer, or as soon thereafter as he shall have sufficient moneys in his hands, he shall pay to the person authorized to receive the same, or to his order, the sum of money so directed to be paid, which shall be allowed to the treasurer in his accounts.

Penalty for taking unlawful fees.

SEC. 10. The provisions of law prohibiting the taking of any fees for services in criminal (*civil*) cases, other than such as are allowed by law, shall apply to the taking of fees in criminal cases beyond the amount allowed by law for such services.

To be taxed for use of county; fees of prosecuting attorney.

SEC. 11. In all criminal prosecutions, where an indictment shall be found, and judgment for costs against the defendant shall be rendered, there shall be taxed for the use of the county, the following fees for the services of the prosecuting attorney, to wit: for drawing an indictment, two dollars ; for trying the cause, four dollars ; for arguing each motion in arrest of judgment, or for a new trial, two dollars ; for services where exceptions are taken by the defendant, two dollars ; for every discharge of the prosecution on the acknowledgment of satisfaction in such cases as are authorized by law, two dollars.

CHAPTER 170.

MISCELLANEOUS PROVISIONS CONCERNING PROCEEDINGS IN CRIMINAL CASES.

SECTION 1. When complaint shall be made on oath to any magis-

trate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, such magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

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Search warrant
for property sto-
len.

SEC. 2. Any such magistrate may also, upon like complaint made on oath, issue a search warrant, when satisfied that there is reasonable cause, in the following cases, to wit :

For what search
warrant may is-
sue.

1. To search for and seize any counterfeit or spurious coin, forged bank notes, or other forged instruments, or any tools, machines, or materials, prepared or provided for making either of them :

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated or distributed, or to be introduced into any family, school or place of education :

3. To search for and seize lottery tickets, or materials for a lottery, unlawfully made, provided or procured for the purpose of drawing a lottery :

4. To search for and seize any gaming apparatus, or implements used, or kept and provided to be used in unlawful gaming, in any gaming house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

SEC. 3. All search warrants shall be directed to the sheriff or any constable of the county, commanding such officer to search, in the day time, the house or place where the stolen property, or other things for which he is required to search, are believed to be concealed, which place, and the property or things to be searched for, shall be designated and described in the warrant, and to bring such property or other things before the magistrate issuing the warrant.

To whom direc-
ted; execution
of.

SEC. 4. If there be positive proof that any property, stolen or embezzled, is concealed in any particular house or place, or that any such other things are then in any particular house or place, the warrant may authorize the searching of such house or place in the night time.

Search in night
time when al-
lowed.

SEC. 5. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any of the other things for which a search warrant is allowed by the provisions of this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced or used as evidence on any trial ; and as soon as may be afterwards, all such stolen or embezzled property shall be restored to the owner thereof, and all the other things seized by virtue of any such warrant, shall be destroyed under the direction of the court or magistrate.

Property seized,
how kept and
used, &c.

SEC. 6. The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, or from the executive authority of any foreign government, any fugitive from justice, or any person charged with treason ; and the accounts of the agents appointed for that purpose shall, in all cases, be audited by the auditor general, and paid out of the state treasury.

Governor may
appoint agents.

SEC. 7. Whenever a demand shall be made upon the governor of

Refugees in this
state.

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this state, by the governor of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory, with treason, felony, or any other crime, the attorney general when required by the governor, shall forthwith investigate the grounds of demand, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this state, or of the United States, or by virtue of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

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SEC. 8. If the governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the state, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agents, and shall also by such warrant require the civil officers within this state, to afford all needful assistance in the execution thereof.

Persons who may be demanded by other states, may be arrested.

SEC. 9. Whenever any person shall be found within this state, charged with any offence committed in any other state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor of such other state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint on oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this state, to answer to such complaint as in other cases.

Required to recognize, &c.

SEC. 10. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, or with murder in the first degree, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the governor, and to abide the order of such court or magistrate in the premises.

Refusing to recognize; failing to appear, &c.

SEC. 11. If such person shall not recognize, or if he shall be charged with a capital crime, or with the crime of murder in the first degree, he shall be committed to prison, and there detained until such day, in like manner as if the offence charged had been committed within this state; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the same proceedings shall be had as in the case of other recognizances entered into before such court or magistrate.

How to be proceeded with.

SEC. 12. If the person so recognized or committed, shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as

before ; provided, that whether the person so charged shall be recognized, committed or discharged, any person authorized by the warrant of the governor, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

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SEC. 13. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly or otherwise as may be ordered by the court or magistrate ; and if the charge for his support in prison shall not be so paid, the jailor may, on the failure of the complainant, discharge such person from his imprisonment.

Expenses, how paid.

SEC. 14. In all cases in which the governor is authorized by the constitution to grant pardons, he may grant a pardon upon such conditions, and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all proper officers to carry into effect such conditional pardon, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally awarded.

Pardons by governor.

SEC. 15. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereof under his hand, with his doings thereon, to the secretary of state, as soon as may be, and he shall also file in the clerk's office of the court in which the offender was convicted, a copy of the warrant and return certified by him, a brief abstract of which the clerk shall subjoin to the record of the conviction and sentence.

Warrant for such purpose, how executed and returned.

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CHAPTER 171.**

TITLE XXXII.

OF IMPRISONMENT FOR OFFENCES, AND THE GOVERNMENT AND DISCIPLINE OF PRISONS.

Chapter 171. Of County Jails, and the Regulation thereof.
Chapter 172. Of the State Prison, and the Government and Discipline thereof.

CHAPTER 171.

OF COUNTY JAILS AND THE REGULATION THEREOF.

For what purposes jails are to be used as prisons.

SECTION 1. The common jails in the several counties, in the charge of the respective sheriffs, shall be used as prisons,

1. For the detention of persons charged with offences, and duly committed for trial :

2. For the detention of persons who may be duly committed, to secure their attendance as witnesses, on the trial of any criminal cause :

3. For the confinement of persons committed pursuant to a sentence, upon conviction for an offence, and of all other persons duly committed for any cause authorized by law :

And the provisions of this section shall extend to persons detained or committed by the authority of the courts of the United States, as well as the courts and magistrates of this state.

How jailor to execute sentence of solitary confinement.

SEC. 2. When any convict shall be sentenced to solitary imprisonment and hard labor in any jail, the keeper thereof shall execute such sentence of solitary imprisonment, by confining the convict in one of the cells, if there be any in such jail, and if there be none, then in the most retired and solitary part of such jail.

Intercourse with convicts.

SEC. 3. No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food and other necessary purposes, unless some minister of the gospel shall be disposed to visit him, in the manner hereinafter provided.

Charges for safe keeping, &c. how allowed and paid.

SEC. 4. All charges and expenses of safe keeping and maintaining convicts, and of persons charged with offences, and committed for examination or trial, to the county jail, shall be paid from the county treasury; the accounts therefor being first settled and allowed by the board of supervisors.

Supervisors may provide by contract for supplies, 1840, p. 55, § 2.

SEC. 5. The board of supervisors may, in their discretion, provide by contract for all necessary supplies for the use of the jail, including fuel and food, clothing, bedding, and medical attendance, for prisoners committed on criminal charges.

Prisoners to be kept separate, as far as practicable.

SEC. 6. It shall be the duty of the keepers of the said prisons, to keep the prisoners committed to their charge, as far as may be practi-

cable, separate and apart from each other, and to prevent all conversation between the said prisoners.

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SEC. 7. Prisoners detained for trial may converse with their counsel, and with such other persons as the keeper, in his discretion, may allow: prisoners under sentence shall not be permitted to hold any conversation with any person except the keepers or inspectors of the prison, unless in the presence of a keeper or inspector.

Conversations by prisoners; how far permitted.

SEC. 8. Prisoners detained for trial, and those under sentence, shall be provided with a sufficient quantity of wholesome food, at the expense of the county; and prisoners detained for trial, may, at their own expense, and under the direction of the keeper, be supplied with any other proper articles of food.

Food for prisoners.

SEC. 9. It shall be the duty of the keepers of the said several prisons, whenever any person shall be sentenced to hard labor therein, and any mode of labor shall be provided, to cause such prisoner to be kept constantly employed during every day, except Sunday; and annually to account with the board of supervisors of the county for the proceeds of such labor.

Duty of jailor in regard to prisoners sentenced to hard labor.
1840, p. 45, § 8.

SEC. 10. The keepers of the said prisons shall respectively have power, with the consent of the supervisors of the county, from time to time, to cause such of the convicts under their charge, as are capable of hard labor, to be employed upon any of the public avenues, streets, highways or other works, in the county in which such prisoners shall be confined, or in any of the adjoining counties, upon such terms as may be agreed upon between the said keepers and the officers or other persons under whose direction such convicts shall be placed.

Employment of convicts upon highways.

SEC. 11. Whenever any convicts shall be employed under the last section, they shall be well chained and secured; and shall be subject to such regulations as the keeper legally charged with their custody, shall from time to time prescribe.

Convicts so employed to be chained, &c.

SEC. 12. Whenever any prisoner who shall be sentenced to pay a fine and costs, or either, and to be committed until the same be paid, shall be employed at hard labor pursuant to the foregoing provisions, he shall be allowed the sum of seventy-five cents for each day's labor, and when he shall have earned the amount of such fine and costs, he shall be discharged.

Prisoner sentenced to pay a fine, &c., to be discharged on earning amount.

SEC. 13. The provisions contained in chapter one hundred and forty-eight, in regard to the designation of the jail of a contiguous county for the use of any county; to the removal of prisoners in such cases; and to the removal of prisoners when danger shall be apprehended from fire or contagious disease, shall extend to prisoners confined upon any criminal process, or for a contempt, or under sentence, in like manner as to prisoners confined in civil cases.

Provisions of chapter 148, in regard to removal of prisoners, &c. to apply in criminal cases.

SEC. 14. Whenever it shall appear to the circuit court for any county, that any convict confined in the jail thereof, has become insane, such court may, by an order to be entered in its minutes, direct that such convict be delivered to the superintendents of the poor of the county.

Insane convicts may be delivered to superintendents of poor.

SEC. 15. The clerk of the court shall cause notice of every such order to be served upon such superintendents, or one of them, who shall immediately take measures for the safe keeping of such insane person, in the manner provided by law.

Notice of order to be given by clerk, &c.

SEC. 16. In each county of this state, the judge of the county court,

Inspectors of jails.

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CHAPTER 171.

Powers of inspectors.

together with the county superintendents of the poor, shall be inspectors of the jails therein respectively.

SEC. 17. Such inspectors shall have power, from time to time, to visit and inspect the common jail and other county prisons, if there be any in their respective counties, and to examine and inquire into all matters connected with the government, discipline and police of such prisons.

Inspectors, when to visit and inspect prisons, and report their condition.

SEC. 18. It shall be the duty of such inspectors to visit and inspect the said prisons, in the month of May, and also in the month of November, in every year, and at the next circuit court which shall thereafter be held in their county, to present to such court, on the first day of its sitting, a detailed report of the condition of such prisons at the time of such inspection.

Report, what to contain.

SEC. 19. Such report shall state the number of persons confined in such prisons for the six months immediately preceding such inspection, and for what causes respectively; the manner in which the convicts confined in such prison during that period have been employed; the number of prisoners usually confined in one room; the distinction, if any, usually observed in the treatment of persons detained in such prisons; the evils, if any, found to exist in such prisons; and particularly whether any of the provisions of this chapter have been violated or neglected, and the causes of such violation or neglect.

Keepers to admit inspectors, exhibit books, &c.

SEC. 20. It shall be the duty of the keepers of each of said prisons to admit the said inspectors, or any of them, into every part of such prison; to exhibit to them on demand, all the books, papers, documents and accounts pertaining to the prison, or to the detention of the prisoners confined therein, and to render them every other facility in their power, to enable them to discharge the duties above prescribed.

Inspectors may examine officers on oath, and converse with prisoners.

SEC. 21. For the purpose of obtaining the necessary information to enable them to make such report as is above required, the said inspectors shall have power to examine, on oath, to be administered by either of the said inspectors, any of the officers of the said prisons, and to converse with any of the prisoners confined therein, without the presence of the keepers thereof, or any of them.

Keeper to present calendar to circuit court.

SEC. 22. It shall be the duty of the keeper of every county prison to present to every circuit court to be held in his county, at the opening of such court, a calendar, stating,

1. The name of every prisoner then detained in [such] prison:
2. The time when such prisoner was committed, and by virtue of what process or precept: and,
3. The cause of the detention of every such person.

When persons not indicted to be discharged by court.

SEC. 23. Within twenty-four hours after the discharge of any grand jury by any circuit court, it shall be the duty of such court to cause every person confined in such prison upon any criminal charge, who shall not have been indicted, to be discharged without bail, unless satisfactory cause shall be shown to such court for detaining such person in custody or upon bail, as the case may require, until the meeting of the next grand jury in such county.

When prisoner not to be removed on habeas corpus, unless, &c.

SEC. 24. After the circuit court for any county shall have commenced its sitting, no prisoner detained in the common jail of such county upon any criminal charge, shall be removed therefrom during such sitting by any writ of habeas corpus, unless such writ shall have been issued by such court, or shall be made returnable before it.

SEC. 25. If any person confined in any jail, upon a conviction or charge of any criminal offence, shall be refractory or disorderly, or shall wilfully or wantonly destroy or injure any article of bedding, or other furniture, or a door or window, or any other part of such prison, the sheriff of the county, after due inquiry, may cause such person to be kept in solitary confinement, not more than ten days for any one offence; and during such solitary confinement, he shall be fed with bread and water only, unless other food shall be necessary for the preservation of his health.

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Refractory prisoners may be punished.

SEC. 26. If any person committed to jail on original process or on execution, or for any other cause than those mentioned in the preceding section, shall be guilty of either of the offences therein specified, and be thereof convicted before a justice of the peace of the county, on the complaint of the keeper of such jail, such person shall be punished by solitary imprisonment, as directed in the preceding section, not more than ten days for any one offence; and such offender shall be liable for double the amount of the damages done to the jail, furniture, or other property, to be recovered with costs of suit, in an action of trespass, in the name of the board of supervisors of the county.

Persons confined on execution, &c., how punished for offence in jails, &c.

SEC. 27. Nothing contained in the two preceding sections, shall be construed to take from any sheriff or jailor, any part of the authority with which he was before invested by law, to preserve order and enforce strict discipline among all the prisoners in his custody.

Construction of two preceding sections.

SEC. 28. If any person lawfully imprisoned in any jail, under sentence of confinement at hard labor, shall break such prison and escape, he shall be punished by imprisonment in the state prison or county jail, not more than three years, in addition to the unexpired portion of the term for which he was originally imprisoned.

Escape of persons under sentence of confinement at hard labor; how punished.

SEC. 29. If any person lawfully imprisoned in any jail, for any cause not mentioned in the preceding section, shall break such prison and escape, he shall be punished by imprisonment, either in the state prison or county jail, not more than one year in addition to the unexpired portion of the term for which he was originally sentenced.

Breaking prison and escaping in other cases, how punished.

SEC. 30. If any person lawfully imprisoned for any cause in any prison or place of confinement established by law, other than the state prison, shall forcibly break the same, with intent to escape, or shall, by any force or violence, attempt to escape therefrom, although no escape be effected, he shall be punished by imprisonment in the county jail not more than one year, in addition to any term for which he was held in prison at the time of such breaking or attempting to escape.

Punishment for attempt to escape.

CHAPTER 172.

OF THE STATE PRISON, AND THE GOVERNMENT AND DISCIPLINE THEREOF.

SECTION 1. There shall continue to be maintained in this state, a state prison, at Jackson, in the county of Jackson.

State prison at Jackson.
1838, p. 123.
1839, p. 133.
Inspectors of prison.
1840, p. 109.

SEC. 2. The said prison shall continue to be under the direction and government of three inspectors, one of whom shall be appointed an-

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- nually by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of three years, and until his successor shall be appointed and qualified, and shall take and subscribe the oath of office prescribed in the twelfth article of the constitution, before entering upon the duties of his office.
- To choose president.** SEC. 3. The board of inspectors shall meet at the state prison office as soon as may be after such appointment of an inspector, and shall choose one of their number to be their president.
- Officers of prison.** SEC. 4. The officers of the prison shall consist of one agent, who shall be the principal keeper, and shall reside at the prison; one clerk, one physician and surgeon, one chaplain, one deputy keeper, and such assistant keepers as the agent and inspectors shall deem to be requisite.
- Agent, how appointed and term of office.** SEC. 5. The agent shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of two years, and until his successor shall be appointed and qualified, unless sooner removed by the governor.
- Other officers, how appointed.** SEC. 6. The clerk, physician and chaplain shall be appointed by the board of inspectors, and shall hold their respective offices during the pleasure of the board; and the deputy keeper and assistant keepers shall be appointed by the agent, with the assent of the inspectors, and hold their offices during his pleasure.
- Inspectors to inquire into government of prison, &c.** SEC. 7. The inspectors shall have power, and it shall be their duty from time to time, to examine and inquire into all matters connected with the government, discipline and police of the prison, the punishment and employment of the prisoners confined therein, the moneyed concerns and contracts for work, and the purchases and sales of the articles provided for such prison, or sold on account thereof; and they may from time to time require reports from the agent or other officers of the prison, in relation to any or all of the said matters.
- Inspectors to inquire into alleged improper conduct of officers.** SEC. 8. It shall be the duty of the inspectors to inquire into any improper conduct which may be alleged to have been committed by the agent or any other officers of the prison: and for that purpose, the president of the board or any justice of the peace shall have power to issue subpoenas, to compel the attendance of witnesses, and the production of papers and writings before them, in the same manner, and with the like effect as in cases of arbitrations.
- Examination of witnesses.** SEC. 9. The inspectors may examine any witnesses who shall appear before them, on oath, to be administered by the president of the board, or in his absence, by any other member thereof.
- Inspectors to be admitted into prison, and books &c. to be exhibited to them.** SEC. 10. It shall be the duty of the agent and other officers of the prison, whenever requested, to admit the inspectors, or either of them into every part of the said prison; to exhibit to them, or either of them, on demand, all the books, papers, accounts and writings, pertaining to the prison, or to the business, government, discipline or management thereof, and to render them every other facility in their power, to enable them to discharge their duties under this chapter.
- Board of inspectors to keep minutes of proceedings.** SEC. 11. The board of inspectors shall keep regular minutes of their meetings and proceedings, which shall be signed by them, and kept in the prison office.
- Duty of board to meet, adopt rules, &c.** SEC. 12. It shall be the duty of the board of inspectors to meet at the prison once in each month, and then to inspect the same; and a majority shall constitute a quorum for the transaction of business; they shall adopt rules and regulations for the direction and govern-

ment of all the officers of the prison ; and all rules and regulations adopted by them, and their proceedings as a board at each meeting, shall be recorded by the clerk of the prison, who shall attend their meetings for that purpose.

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SEC. 13. A printed copy of the rules and regulations of the prison shall be furnished to every officer and guard of said prison at the time he is appointed and sworn.

Printed copy of rules to be furnished to each officer and guard.

SEC. 14. The agent of the prison may make and issue general and special orders, and make rules, to be in force until the next meeting of the board of inspectors and no longer, and all general orders or rules for the government of the subordinate officers of the prison, made by the agent, shall be in writing, and shall be entered in a book to be kept by him for that purpose.

General and special rules and orders by agent.

SEC. 15. The agent or deputy keeper shall also keep a daily journal of the proceedings of the prison, in which he shall note every infraction of the rules and regulations of the prison, by any officer or guard thereof, which shall come to his knowledge, and make a memorandum of every complaint made by any convict, of cruel or unjust treatment from his overseer or other officer of the prison, or a want of good and sufficient food or clothing ; and also of every infraction of the rules and regulations of the prison, by any prisoner, naming him and specifying the offence, and also, what punishment, if any, was awarded ; which journal shall be laid before the inspectors at every stated meeting, and at every special meeting, when demanded.

Daily journal to be kept and laid before inspectors

SEC. 16. No mechanical trade shall hereafter be taught to convicts in the state prison of this state, except the making of those articles, of which the chief supply for the consumption of the country, is imported from other states or countries.

What mechanical trades not to be taught in prison.

SEC. 17. It shall be the duty of the inspectors of the prison to make out and transmit to the secretary of state, on or before the first day of January in each year, a full statement of the monthly reports of the agent, verified by his oath ; also a full statement of the number of convicts received into the prison, and from what county received, and for what crimes convicted ; the number discharged, died, escaped and pardoned, and the general health of the convicts ; also a statement of the money expended in the support and maintenance of the prisoners, and the wages of the guard, and of all moneys received for articles sold, and for the labor of the convicts, and generally of all the proceedings during the year.

Report to be made by inspectors to secretary of state annually.

SEC. 18. No inspector of the state prison shall be agent thereof, or be concerned in the business of such agency, or hold any other appointment or place connected with the prison.

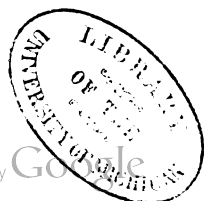
No inspector to be agent, &c.

SEC. 19. There shall be paid to the officers of the prison the following annual salaries and compensations, to be paid quarterly out of the treasury, on the warrant of the auditor general, to wit : to the agent, the sum of seven hundred dollars ; to the clerk, the sum of four hundred dollars ; to the deputy keeper, four hundred dollars ; and to the assistant keepers, a sum not exceeding four hundred dollars each as the inspectors shall deem just and equitable ; to the chaplain, one hundred dollars, and to the physician, such sum as the inspectors shall allow.

Compensation of officers.

SEC. 20. It shall be the duty of the inspectors to appropriate annually out of the avails of the prisoners' labor, and fees received from visitors, the sum of one hundred dollars in the purchase of books for said prison, for the use of said convicts.

Purchase of books for convicts.



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CHAPTER 172.**

Prison guards,

SEC. 21. The inspectors shall from time to time employ, arm and furnish such guards as the preservation of discipline and safe keeping of the prisoners may require, who shall be under the direction and control of the agent of the prison.

Compensation of inspectors.

SEC. 22. The inspectors shall be allowed for their services respectively, one dollar and fifty cents for each and every day actually and necessarily occupied in inspecting the prison, and inquiring into the management thereof, not to exceed thirty days in each year, and they shall also be allowed the same amount of traveling fees as are allowed by law to members of the board of supervisors, to be audited by the auditor general, and to be paid on his warrant out of any moneys in the treasury not otherwise appropriated.

Agent and clerk to give bond.

SEC. 23. The agent and clerk shall each, before entering upon the duties of their respective offices, execute to the people of this state, their bonds, with two or more sufficient sureties; the agent in the penal sum of twenty thousand dollars, and the clerk in the penal sum of five thousand dollars, conditioned for the faithful performance of their duties according to law; said bonds to be approved by the inspectors, and filed in the office of the auditor general.

Oaths of office, and filing thereof.

SEC. 24. The agent, clerk, deputy keeper, assistant keepers and guards, shall each, before entering upon the duties of their respective offices, take and subscribe the oath of office prescribed in the twelfth article of the constitution, before some officer authorized by law to administer oaths, and the same shall, as soon as convenient, be filed in the office of the auditor general.

Duties of agent.

SEC. 25. It shall be the duty of the agent,

1. To attend constantly at the prison, except when performing some other duty connected with his office :

2. To exercise a general superintendence over the government, discipline and police of the prison, and to superintend all the business concerns thereof :

3. To give necessary directions to the keepers, and to examine whether they have been careful and vigilant in their respective duties :

4. To examine daily into the state of the prison, and the health, conduct and safe keeping of the prisoners :

5. To use every proper means to furnish employment to the prisoners most beneficial to the public, and best suited to their several capacities :

6. To superintend the manufacturing and mechanical business that may be carried on pursuant to law, within the prison ; to receive the articles manufactured, and to sell and dispose of the same for the benefit of the state :

7. To take charge of the real and personal estate attached to the prison.

Transactions of prison to be conducted in name of agent.

SEC. 26. All the transactions and dealings on account of said prison, shall be conducted by and in the name of the agent, who shall be capable in law of suing and being sued in all courts and places, and in all matters concerning the said prison, by his name of office ; and by that name he is hereby authorized to sue for and recover all sums of money, or any property, due from any person to any former agent of the said prison, or to the people of this state on account of said prison.

SEC. 27. Whenever the inspectors shall so direct, it shall be the

duty of the agent to make contracts from time to time, for the labor of the convicts confined in the said prison, or of any of the said convicts, with such persons, and upon such terms as may be deemed by the agent most beneficial to the interests of the people of this state, and subject to such regulations as the inspectors shall prescribe.

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Contracts for labor of convicts.
1842, p. 130.

SEC. 28. All contracts so to be made shall be reduced to writing, and a counterpart or copy of every such contract, shall be filed with the clerk of the prison.

Contracts to be in writing.

SEC. 29. The prisoners confined in the state prison, shall be supplied with provisions by contract, unless the inspectors shall otherwise direct, to be made by the agent under the direction of the inspectors, with such persons as may be willing to do it on the best terms, at a fixed price per day for each prisoner.

How prisoners to be supplied with provisions.

SEC. 30. The articles of food, and the quantities of each kind, shall be prescribed by the inspectors and inserted in the contract; and so many rations shall be delivered daily, or at such other times as may be agreed on, as there are convicts confined therein.

Articles and the quantity to be prescribed by inspectors.

SEC. 31. Before any contract for the supply of rations shall be made, a notice, stating the number of rations, and the quantity and quality of each part of the ration, and the time and place of receiving proposals for furnishing the same, shall be given by publication in two newspapers, one of which shall be a paper printed at Detroit, and the other a newspaper printed in the county of Jackson; and the contracts shall be made with those persons who offer the most advantageous proposals to the state, provided satisfactory security be offered, unless the inspectors shall deem it expedient to decline all the proposals, and advertise anew.

Notice for supplies.

SEC. 32. The necessary medicines and other hospital stores for the use of the prison, shall be purchased from time to time as may be necessary, by the agent of the prison, with the advice of the physician, and under the direction of the inspectors.

Hospital stores.

SEC. 33. The agent, under the direction of the inspectors, may also purchase such raw materials as may be necessary, to be manufactured in the prison, and to be paid for by such agent out of any money in his hands belonging to the state.

Purchase of raw materials.

SEC. 34. No inspector, agent, or any other officer of the prison, shall be directly or indirectly interested in any contract, purchase or sale, for or on account of such prison, under the penalty of five hundred dollars.

No officer to be interested.

SEC. 35. Whenever any supplies or materials for the prison shall be purchased, it shall be the duty of the agent to take bills therefor at the time of the purchase, and the clerk shall compare such bills with the articles delivered at the prison, and if found correct, shall enter them in books to be provided for that purpose; and whenever any services are rendered for the prison, it shall in like manner be the duty of the agent to take bills thereof, at the time of making payment therefor; and every such bill shall be entered by the clerk in the books of the prison, unless he shall know or have reason to believe that such bills are erroneous.

Agent to take bills, clerk to enter same.

SEC. 36. It shall be the duty of the agent to keep a regular and correct account of all moneys received by him from every source by virtue of his office, including all moneys taken from convicts, or received as the proceeds of property taken from them, and of all sums paid by him, and the persons to whom, and the purposes for which

Agent to make return monthly.

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the same were paid, and to make out and deliver to the inspectors monthly, on oath, a return of all moneys received and paid by him on account of the prison, during the preceding month, specifying from whom received, and to whom paid, and on what account, and stating also the balance in his hands at the time of rendering such account.

Agent to render account annually to auditor general.

SEC. 37. The agent shall, annually, on the last day of November, in every year, close his account, and on or before the fifteenth day of December thereafter, shall render to the auditor general a full and true account of all moneys received by him on account of the prison, and of all moneys expended by him for the use thereof, with sufficient vouchers for the same, and also an inventory of the goods, materials and other property of the state on hand, exhibiting a complete detail of the transactions of the prison for the year.

Affidavit.

SEC. 38. To the several returns, accounts and inventories required by the preceding section to be rendered, there shall be annexed an affidavit of the agent and clerk of the prison, stating that the same are true in every respect, to the best of their knowledge and belief.

Duty of auditor.

SEC. 39. It shall be the duty of the auditor general to examine and audit the accounts of the agent, and annually to lay a statement thereof before the legislature.

Agent to report to inspectors the annual transactions of prison.

SEC. 40. The agent shall, on or before the first day of December, in every year, make and deliver to the inspectors of the prison, a report, exhibiting a complete and comprehensive view of the transactions of the prison during the preceding year, and stating the number of convicts confined therein; the various kinds of business in which they are employed; the number employed in each branch, and the profits, if any, arising to the state therefrom.

Officers to receive no perquisites, except, &c.

SEC. 41. The agent, keeper, and other officers, and the guards of the prison, shall not receive any perquisites or emoluments for their services, other than the compensation allowed by law, except that the agent shall keep his office, and reside with his family at the prison, and shall be furnished with fuel and lights from the stock provided for the use of the prison, and from the said stock, shall furnish fuel and lights for the barracks of the guards; and the deputy keeper shall be furnished with the house now occupied by the deputy keeper, free of rent.

Agent to report annually to secretary of state.

SEC. 42. It shall be the duty of the agent, annually, on or before the first day of December, to report to the secretary of state, the names of the convicts pardoned or discharged during the preceding year from the prison; the counties in which they were tried; the crimes for which they were convicted; the terms for which they were severally committed; the ages and description of their persons; and in cases of pardons, the term unexpired for which they were severally sentenced; when such [pardons] were granted, and the terms, if any, upon which they were granted.

When deputy keeper to perform duties of agent.

SEC. 43. Whenever there shall be a vacancy in the office of the agent of the prison, or when the agent shall necessarily be absent from the prison, all the duties and powers of such agent, so far as the same relate to the safe keeping of the prisoners, and the discipline of the prison, shall devolve upon and be executed by the deputy keeper of the prison, until the vacancy be filled, or the agent return to the prison.

Duties of physician.

SEC. 44. It shall be the duty of the physician of the prison, to keep

a register of all convicts placed under his care, stating the disease with which they are afflicted, and the date of their entering and leaving the hospital; also, a register of all the deceased convicts, stating their names, ages, disease, time and cause of death, and all other circumstances which he may deem proper and necessary; which register shall always remain in the prison, and be open to inspection.

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SEC. 45. All books of account, registers and other documents and papers relating to the affairs of the prison, shall be considered public property, and shall remain therein; and the agent shall preserve at least one set of copies of all official reports made to the legislature respecting the prison, and the transactions thereat.

Books public property, and to remain in prison.

SEC. 46. No officer of the prison shall employ the labor of any convict upon any work in which he or any other officer shall be interested.

No officer to employ labor of the convicts.

SEC. 47. All convicts in the state prison, other than such as are confined in solitude for misconduct in the prison, shall be kept constantly employed at hard labor not less than eight hours each day, (Sundays excepted,) unless incapable of laboring by reason of sickness or other infirmity.

Convicts kept at hard labor.

SEC. 48. Whenever there shall be a sufficient number of cells in the prison, it shall be the duty of the agent to keep each prisoner singly in a cell at night, and also during the day time when unemphoyed.

To be kept separate.

SEC. 49. The clothing and bedding of the convicts shall be of coarse materials, manufactured, as far as practicable, in the prison; and they shall be supplied with a sufficient quantity of wholesome coarse food.

Clothing and bedding.

SEC. 50. The agent shall furnish at the expense of the state, a bible to each of the convicts who can read, and such convicts as cannot read, he shall cause to be instructed in the principles of reading, writing and arithmetic.

Convicts to be furnished with bibles, &c.

SEC. 51. When several convicts combined, or any convict alone, shall offer violence to any officer or guard of the prison, or to any other convict or person, or do, or attempt to do, any injury to the building or any workshop, or to any appurtenances thereof, or attempt to escape, or resist or disobey any reasonable command, the officers of the prison shall use all suitable means to defend themselves, to enforce the observance of discipline, to secure the persons of the offenders, and to prevent any such attempt to escape.

Duty of officers in case of violence, or attempt to escape.

SEC. 52. The assistant keepers shall preserve proper discipline among the convicts under their charge, and may punish them for misconduct, in such manner, and under such regulations as shall be adopted by the board of inspectors, and any such keeper shall, as soon as the next day after inflicting punishment on any convict, deliver to the agent or deputy keeper, a written memorandum thereof, signed by him, stating the offence committed, and the kind and extent of the punishment inflicted.

Assistant keepers to preserve discipline.

SEC. 53. It shall be the duty of the agent to take charge of any property which any convict may have with him at the time of entering the prison; and if the same is worth five dollars or more, the agent shall sell or preserve the same, and place the proceeds thereof at interest, for the benefit of such convict or his representatives.

Agent to take charge of property of convicts.

SEC. 54. Such agent shall keep a correct account of all such property, and shall pay the amount, or the proceeds thereof, or return the

To keep account and pay over proceeds.

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same, to the convict when discharged, or to his legal representatives in case of his death, and in case of the death of such convict without being released, if no legal representative shall demand such property within five years, then the same shall be applied to the use of this state.

Clothing and money to be furnished convict on discharge.

SEC. 55. When any convict shall be discharged from prison, by pardon or otherwise, the agent shall furnish such convict with clothing, if he be not already provided for, not exceeding ten dollars in value, and such sum of money, not exceeding three dollars, as the agent may deem necessary and proper.

Letters not to be delivered to convicts, &c.

SEC. 56. No person, without the consent of the agent, shall bring into, or carry out of the prison, any letter or writing, or any information, to or from any convict; and whoever shall violate the provisions of this section, shall be deemed guilty of a misdemeanor.

Persons authorized to visit convicts at pleasure.

SEC. 57. The following persons shall be authorized to visit the prison at pleasure, namely: the governor, lieutenant governor, members of the legislature, the secretary of state, the chancellor, the judges of the supreme court and circuit court, the attorney general and prosecuting attorneys, and all regular officiating ministers of the gospel; and no other person shall be permitted to go within the walls of the prison where convicts shall be confined, except by special permission of the agent, or under such regulations as the inspectors shall prescribe.

Copy of sentence to be delivered with convict, 1843, p. 148.

SEC. 58. When any convict shall be delivered to the keeper of the state prison, the officer having such convict in his charge, shall deliver to such keeper the certified copy of the sentence received by such officer from the clerk of the court, and shall take from such keeper a certificate of the delivery of such convict; and such certified copy of the sentence of any convict shall be evidence of the facts therein contained.

Reward for convicts who have escaped.

SEC. 59. Whenever any convict shall escape from the prison, it shall be the duty of the keeper to take all proper measures for the apprehension of such convict, and for that purpose he may offer a reward, not exceeding one hundred dollars, for the apprehension of such convict.

Reward to be paid out of state treasury.

SEC. 60. All suitable rewards and other sums of money, necessarily paid for advertising and apprehending any convict that may escape from the prison, shall be allowed by the auditor general, and paid out of the state treasury.

Removal of convicts in case of pestilence.

SEC. 61. In case any pestilence or contagious disease shall break out among the convicts in prison, or in the vicinity of the prison, the inspectors may cause the convicts therein to be removed to some suitable place of security, where such of them as may be sick, shall receive all necessary care and medical attendance, and such convicts shall be returned as soon as it may be safe to do so, to the prison, and there confined according to their respective sentences, if the same be unexpired.

In case of fire.

SEC. 62. Whenever, by reason of the state prison being on fire, or any building contiguous or near to such prison being on fire, there shall be reason to apprehend that the convicts confined therein may be injured or endangered by such fire, the keeper may remove such convicts to some safe and convenient place, and there confine them so long as may be necessary to avoid the danger.

SEC. 63. It shall be the duty of the keeper of the state prison to

receive therein and safely keep, and subject to the discipline of the prison, any criminal convicted of any crime against the United States, sentenced to imprisonment therein by any court of the United States sitting within this state, until such sentence shall be executed, or until such convict shall be discharged by due course of law, the United States supporting such convicts, and paying the expenses of executing such sentence.

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Convicts sentenced by courts of U. S.

SEC. 64. If any convict confined in the state prison shall be considered an important witness in behalf of the people of this state, upon any criminal prosecution against any other convict, by the prosecuting attorney conducting the same, it shall be the duty of any officer or court authorized by law to allow writs of habeas corpus, upon the affidavit of such prosecuting attorney, to grant a habeas corpus for the purpose of bringing such prisoner before the proper court, to testify upon such prosecution.

When habeas corpus may be granted for convict to testify.

SEC. 65. No spirituous or fermented liquor shall, on any pretence whatever, be sold in the state prison, or in any building appurtenant thereto, or on the land granted to the state for the use and benefit of the prison; and no such liquors shall be given to or suffered to be used by any convict in the prison, unless he be sick, and then only under the special direction of the physician.

Spirituous liquors not to be sold in prison.

SEC. 66. It shall be the duty of the sheriff of every county in which any criminal shall be sentenced to confinement in the state prison, as soon as may be practicable after the passing of such sentence, to convey such convict to the state prison and deliver him to the keeper thereof.

Sheriffs to convey convicts to prison.
1843, p. 24, § 5.

SEC. 67. The fees and expenses of sheriffs in conveying convicts to the state prison shall be paid by the agent out of any moneys in his hands belonging to the state, subject to such regulations as shall be prescribed by the auditor general; and the agent shall keep an account of all such fees and expenses, and submit the same to the auditor general with his annual report.

Expenses of conveyance.
1843, p. 24, § 6.

SEC. 68. The auditor general is hereby authorized and required to draw his warrant on the treasurer for such sums as the inspectors of the prison shall from time to time direct; but such sums so drawn at any one time shall not exceed one thousand dollars, and no further sum shall be drawn until satisfactory vouchers are presented to and allowed by the auditor general for the amount previously drawn.

Auditor general to draw warrant

SEC. 69. It shall be the duty of the agent and deputy keeper to see that rigid economy is practiced in all matters pertaining to the prison, and in the employment of prisoners, and that duplicate receipts be taken for all expenditures made by them on account of the prison, one copy of which shall be sent to the auditor general's office monthly.

Rigid economy to be practised.

SEC. 70. It shall be lawful for the inspectors to establish uniform rules for the admission of visitors within the prison, and they may order the keeper to demand and receive for each individual admitted within said prison, such sums as they may from time to time establish, not exceeding twenty-five cents for one admission for each person, and they shall cause an account to be kept of the number of visitors, and the amount received for their admission; which shall be accounted for in the same manner as other moneys belonging to the prison.

Admission fees.

SEC. 71. The agent, clerk, deputy keeper, assistant keepers, guards and other necessary attendants, shall, while in the actual employ of

Officers and guards exempted from military and jury duty.

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Extra copies of
report to be printed,
&c.

Auditor general
to settle accounts
on removal of
agent.

the state as such officers, guards and attendants respectively, be exempt from military and jury duties.

SEC. 72. There shall be printed annually, for the use of the prison, one hundred extra copies of the annual report of the inspectors, and the agent shall annually transmit to each of the state prisons in the United States, one copy of such report.

SEC. 73. On the removal or resignation of any agent of said prison, the auditor general shall settle the accounts of such agent, on the presentation of his books and vouchers duly authenticated for that purpose.

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OF THE REPEAL OF THE STATUTES REVISED AND CONSOLIDATED IN
THIS ACT.

SECTION 1. All the provisions contained in this act shall take effect and go into operation from and after the first day of March, in the year one thousand eight hundred and forty-seven, except that portion of said act which provides for the election of judges of the county courts, which shall take effect and go into operation from and after its passage; and the judges so elected shall enter into the discharge of their official duties on the said first day of March aforesaid, when this act shall go into effect; and from and after the day last mentioned, the following acts and parts of acts heretofore passed by the legislature, shall be repealed, to wit:

When revised
statutes to take
effect.

Acts and parts of
acts repealed.

An act for revising and consolidating the general statutes of the state of Michigan, passed at the adjourned session of the legislature in the year eighteen hundred and thirty-seven, and the regular session in the year eighteen hundred and thirty-eight, known and distinguished as the Revised Statutes;

An act to provide for the organization and government of the university of Michigan, approved March eighteenth, eighteen hundred and thirty-seven;

An act to provide for the organization and support of primary schools, approved March twentieth, eighteen hundred and thirty-seven;

An act to provide for proceedings in chancery against corporations, and for other purposes, approved June twenty-first, eighteen hundred and thirty-seven;

An act to amend "an act to provide for the organization and government of the university of Michigan," approved June twenty-first, eighteen hundred and thirty-seven;

An act to amend "an act concerning mortgages," approved June twenty-second, eighteen hundred and thirty-seven;

An act to provide for the safe keeping and management of the state library, approved December twenty-eighth, eighteen hundred and thirty-seven;

An act relative to firemen, approved March twentieth, eighteen hundred and thirty-eight;

An act to amend an act to organize the militia, approved March twenty-seventh, eighteen hundred and thirty-eight;

An act to impose certain duties on the several county commissioners, and for other purposes, approved March twenty-ninth, eighteen hundred and thirty-eight;

An act further to provide for proceedings in chancery in certain cases, approved April sixth, eighteen hundred and thirty-eight;

An act to provide for the adjustment of claims on the division of townships, approved April sixth, eighteen hundred and thirty-eight;

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An act to provide for the distribution and sale of the laws, approved April sixth, eighteen hundred and thirty-eight;

An act to provide for recording the laws and for other purposes, approved April sixth, eighteen hundred and thirty-eight;

An act regulating prison limits, approved February fifth, eighteen hundred and thirty-nine;

An act to amend part third, title first, chapter third of the revised statutes, and for other purposes, approved February eighth, eighteen hundred and thirty-nine;

An act to authorize the exemption of certain libraries and other articles from execution, approved February fourteenth, eighteen hundred and thirty-nine;

An act relative to school books and books for district libraries, approved March fourth, eighteen hundred and thirty-nine;

An act to regulate township meetings in newly organized townships, approved March twelfth, eighteen hundred and thirty-nine;

An act to amend title second, of the third part of the revised statutes, approved March twenty-first, eighteen hundred and thirty-nine;

An act to provide for the collection of demands against boats and vessels, approved April tenth, eighteen hundred and thirty-nine;

An act to abolish imprisonment for debt, and to punish fraudulent debtors, approved April tenth, eighteen hundred and thirty-nine;

An act to amend chapter first, title tenth, part first of the revised statutes, "Of religious societies," approved April eleventh, eighteen hundred and thirty-nine;

An act to amend the revised statutes in relation to taverns and other licensed houses, approved April eleventh, eighteen hundred and thirty-nine;

An act to provide for the voluntary dissolution of corporations, and to prescribe the duties of receivers in chancery in certain cases, and for other purposes, approved April fifteenth, eighteen hundred and thirty-nine;

An act relative to trunks, baggage and other unclaimed personal property, approved April sixteenth, eighteen hundred and thirty-nine;

An act relative to certain state annual reports, approved April sixteenth, eighteen hundred and thirty-nine;

An act more effectually to protect the public against various frauds, approved April sixteenth, eighteen hundred and thirty-nine;

An act to authorize township meetings to adjourn from one place to another, approved April sixteenth, eighteen hundred and thirty-nine;

An act amendatory of part first, title seven, and chapter first of the revised statutes, relative to the inspection of provisions, &c., approved April seventeenth, eighteen hundred and thirty-nine;

An act to provide for the government and discipline of the state prison, approved April seventeenth, eighteen hundred and thirty-nine;

An act regulating sales at auction and for other purposes, approved April sixteenth, eighteen hundred and thirty-nine;

An act to provide for the draining of swamps, marshes and other low lands, approved April eighteenth, eighteen hundred and thirty-nine;

An act to authorize certain persons to administer oaths, approved April nineteenth, eighteen hundred and thirty-nine;

An act relative to township assessments and the returns thereof, approved April nineteenth, eighteen hundred and thirty-nine ;

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An act to provide for regulating the terms of the circuit courts in certain counties, and for other purposes, approved April nineteenth, eighteen hundred and thirty-nine ;

An act to provide the circuit courts of certain counties with seals, approved April twentieth, eighteen hundred and thirty-nine ;

An act to amend the chapter of the revised statutes entitled "Of primary schools," approved April twentieth, eighteen hundred and thirty-nine ;

An act amendatory to "an act to provide for the government and discipline of the state penitentiary, and for other purposes," approved April twentieth, eighteen hundred and thirty-nine ;

An act to amend the revised statutes, and to supply certain omissions therein, approved April twentieth, eighteen hundred and thirty-nine :

An act authorizing the circuit courts to cause recognizances and other securities for appeals from justices of the peace to be amended, approved February first, eighteen hundred and forty ;

An act amendatory to part first, title seven, chapter first of the revised statutes, approved February sixth, eighteen hundred and forty ;

An act to amend chapter first, title tenth, part first of the revised statutes, "Of religious societies," approved February fifteenth, eighteen hundred and forty ;

An act relative to circuit courts and for other purposes, approved February nineteenth, eighteen hundred and forty ;

An act to establish a district court within the county of Wayne, approved February twenty-seventh, eighteen hundred and forty ;

An act relative to townships, approved March sixth, eighteen hundred and forty ;

An act relative to the costs of prosecution in criminal cases, approved March sixth, eighteen hundred and forty ;

An act to amend chapter fourth, title third, part first of the revised statutes, relating to "Removals from office," approved March sixth, eighteen hundred and forty ;

An act to amend part third, title four, chapter nine of the revised statutes, "Of the lien of mechanics and others," approved March thirteenth, eighteen hundred and forty ;

An act to grant certain privileges and exemptions to firemen of the city of Detroit and others, approved March fourteenth, eighteen hundred and forty ;

An act to authorize the conveyance of real estate by minors in certain cases, approved February twenty-eighth, eighteen hundred and forty ;

An act to amend part fourth, title first, and chapter fourth of the revised statutes, and for other purposes, approved March fourteenth, eighteen hundred and forty ;

An act to amend part third, title two, chapter five of the revised statutes, entitled "Of jurors," approved March fourteenth, eighteen hundred and forty ;

An act to establish two additional chancery circuits in the state of Michigan, approved March fourteenth, eighteen hundred and forty ;

An act relative to filing of oaths of office and bonds of certain civil officers, approved March sixteenth, eighteen hundred and forty ;

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An act to amend chapter one, title four, and part three of the revised statutes, entitled "Of proceedings against debtors in attachment," approved March sixteenth, eighteen hundred and forty ;

An act to extend the powers of county commissioners in certain cases, and to regulate appeals from their decisions, approved March sixteenth, eighteen hundred and forty :

An act to amend titles four and five, part second of the revised statutes ; also title seven, part second, chapter five of the same, relative to guardians and wards, approved March eighteenth, eighteen hundred and forty ;

An act to provide for the organization of courts of special sessions, and to define their powers and duties, approved March nineteenth, eighteen hundred and forty ;

An act relative to highways, approved March twentieth, eighteen hundred and forty ;

An act to amend chapter five, title three, part three of the revised statutes, entitled "Of forcible entry and detainer," approved March twentieth, eighteen hundred and forty ;

An act to regulate the terms of the supreme court and circuit courts, and for other purposes, approved March twenty-fifth, eighteen hundred and forty ;

An act to amend "an act to provide for the government and discipline of the state prison," approved March twenty-fifth, eighteen hundred and forty ;

An act to abolish the office of bank commissioners, and for other purposes, approved March twenty fifth, eighteen hundred and forty ;

An act to amend part first, title five, chapter seven of the revised statutes, in relation to the duties of county commissioners, approved March twenty-sixth, eighteen hundred and forty ;

An act to provide for the safe keeping and management of the statelibrary, approved March twenty-eighth, eighteen hundred and forty ;

An act to abolish certain offices and for other purposes, approved March twenty-eighth, eighteen hundred and forty ;

An act relative to proceedings in chancery, approved March twenty-eighth, eighteen hundred and forty ;

An act to regulate the salary of the governor, and for other purposes, approved March twenty-eighth, eighteen hundred and forty ;

An act to amend "an act relative to trunks and baggage and other unclaimed personal property, approved April sixteenth, eighteen hundred and thirty-nine ;" approved March thirtieth, eighteen hundred and forty ;

An act to amend chapter first, title third, part second of the revised statutes, relating to wills of real and personal estates, and for other purposes, approved March thirty-first, eighteen hundred and forty ;

An act to amend an act entitled "an act to abolish imprisonment for debt and to punish fraudulent debtors," approved March thirty-first, eighteen hundred and forty ;

An act to provide for the foreclosure of mortgages by advertisement, approved March thirty-first, eighteen hundred and forty ;

An act supplemental to an act entitled "an act to amend an act to provide for the government and discipline of the state prison, approved March twenty-fifth, eighteen hundred and forty ;" approved March thirty-first, eighteen hundred and forty ;

An act granting certain corporate powers to the joint owners of burial grounds, approved March thirty-first, eighteen hundred and forty ;

An act to authorize the several counties of this state to effect insurance on their county buildings, approved April first, eighteen hundred and forty; TITLE XXXIII.
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An act relative to the powers of county commissioners, approved April first, eighteen hundred and forty;

An act relative to the conveyance of real estate, approved April first, eighteen hundred and forty;

An act to amend an act entitled "an act relative to highways," approved April first, eighteen hundred and forty;

An act supplementary to an act entitled "an act to regulate the terms of the supreme and circuit courts, and for other purposes," approved April first, eighteen hundred and forty;

An act to regulate and prescribe the amount of fees, approved April first, eighteen hundred and forty;

An act to amend the revised statutes relative to primary schools, approved April first, eighteen hundred and forty;

An act to exempt grain while growing and other unharvested crops from sale under execution, approved April first, eighteen hundred and forty;

An act relative to the auditor general and state treasurer, and the offices of both, approved April first, eighteen hundred and forty;

An act relative to the distribution of the primary school moneys, approved January twenty-first, eighteen hundred and forty-one;

An act relative to the administration of oaths to members and officers of the legislature, approved February fifth, eighteen hundred and forty-one;

An act to amend sections ten and eleven of chapter second, title third, part first of the revised statutes, approved February twelfth, eighteen hundred and forty-one;

An act to amend chapter three, title three, and part first of the revised statutes, relative to prosecuting attorneys, approved March second, eighteen hundred and forty-one;

An act to provide for the compensation of township collectors, approved March sixth, eighteen hundred and forty-one;

An act to provide for the punishment of certain officers who shall neglect or refuse to pay over moneys, approved March twentieth, eighteen hundred and forty-one;

An act to amend an act entitled "an act to provide for the voluntary dissolution of corporations, and to prescribe the duties of receivers in chancery in certain cases," approved March twenty-fourth, eighteen hundred and forty-one;

An act relative to the sale of real and personal estate on execution, approved March twenty-seventh, eighteen hundred and forty-one;

An act regulating the holding of courts in Shiawassee county, approved March twenty-eighth, eighteen hundred and forty-one;

An act in relation to the duties of county commissioners in certain cases, approved March twenty-seventh, eighteen hundred and forty-one;

An act to amend chapter two, title three and part three of the revised statutes, entitled "Of the action of ejectment," approved April second, eighteen hundred and forty-one;

An act to amend chapter five, title four, part three of the revised statutes, relating to proceedings in replevin, approved April second, eighteen hundred and forty-one;

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An act relative to jurors, approved April second, eighteen hundred and forty-one ;

An act to regulate the business of brokers and exchange dealers, approved April second, eighteen hundred and forty-one ;

An act to amend part third, title third, chapter first, section seven (page 465) of the revised statutes, approved April second, eighteen hundred and forty-one ;

An act further to amend chapter first, title tenth, part first of the revised statutes, entitled "Of religious societies," approved April sixth, eighteen hundred and forty-one ;

An act amendatory of "an act to amend the revised statutes relative to primary schools, approved April first, eighteen hundred and forty ;" approved April sixth, eighteen hundred and forty-one ;

An act to prescribe the powers and duties of justices of the peace in civil proceedings, approved April ninth, eighteen hundred and forty-one ;

An act relative to postponing sales by sheriffs and other officers, and for other purposes, approved April ninth, eighteen hundred and forty-one ;

An act to alter the terms of the court of chancery in the fourth and fifth circuits, approved April ninth, eighteen hundred and forty-one ;

An act to provide for the protection of Indians and for other purposes, approved April ninth, eighteen hundred and forty-one ;

An act to reduce the price of public printing and for other purposes, approved April twelfth, eighteen hundred and forty-one ;

An act supplementary to an act entitled "an act relative to the sale of real and personal estate on execution, approved March twenty-fourth, eighteen hundred and forty-one ;" approved April thirteenth, eighteen hundred and forty-one ;

An act to reduce the price of University and school lands and for other purposes, approved April thirteenth, eighteen hundred and forty-one ;

An act to prescribe certain duties of commissioners of highways, and other township officers, and for other purposes, approved April thirteenth, eighteen hundred and forty-one ;

An act in relation to delinquent taxes, approved April thirteenth, eighteen hundred and forty-one.

An act defining the powers of the court of chancery in partitions, approved April thirteenth, eighteen hundred and forty-one ;

An act relative to the duties of township treasurers, approved April thirteenth, eighteen hundred and forty-one ;

An act in relation to mortgages, approved April thirteenth, eighteen hundred and forty-one ;

An act to amend the law relative to crimes, approved April thirteenth, eighteen hundred and forty-one ;

An act to preserve the purity of elections, and to amend title second of part first of the revised statutes, approved April thirteenth, eighteen hundred and forty-one.

An act to amend chapter five, title three, part three of the revised statutes, entitled "Of forcible entry and detainer," approved April thirteenth, eighteen hundred and forty-one ;

An act to amend section second, of chapter sixth, title second, part first of the revised statutes, relative to district canvass and for other

purposes, approved April thirteenth, eighteen hundred and forty-one ;

An act to amend chapter eight, title five, part first of the revised statutes, relative to specific taxes, approved April thirteenth, eighteen hundred and forty-one ;

An act to amend the several acts relative to the militia, approved April thirteenth, eighteen hundred and forty-one ;

An act to amend an act entitled "an act to amend section second of chapter sixth, title second, part first of the revised statutes, relative to district canvass and for other purposes," approved January eighth, eighteen hundred and forty-two ;

An act to amend the revised statutes in relation to the inventory and collection of the effects of deceased persons, approved February first, eighteen hundred and forty-two ;

An act to require an annual settlement with the state of certain state officers and agents, and for other purposes, approved February fourth, eighteen hundred and forty-two ;

An act relative to the decisions of the supreme court, approved February tenth, eighteen hundred and forty-two ;

An act in relation to the competency of witnesses, approved February tenth, eighteen hundred and forty-two ;

An act to abolish the office of county commissioners and for other purposes, approved February tenth, eighteen hundred and forty-two ;

An act to prevent illegal banking, approved February eleventh, eighteen hundred and forty-two ;

An act to amend chapter five, title three, part three of the revised statutes, entitled "Of forcible entry and detainer," approved February fifteenth, eighteen hundred and forty-two ;

An act to change the time of holding the circuit court in the county of Clinton, approved February fifteenth, eighteen hundred and forty-two ;

An act to reduce the rate of taxation on real and personal property, approved February sixteenth, eighteen hundred and forty-two ;

An act relative to the salt springs and the lands granted for the use of the same, approved February sixteenth, eighteen hundred and forty-two ;

An act to exempt certain property from execution or sale for any debt, damages, fine or amercement, approved February sixteenth, eighteen hundred and forty-two ;

An act to amend an act entitled "an act to organize courts of special sessions, approved March nineteenth, eighteen hundred and forty," approved February sixteenth, eighteen hundred and forty-two ;

An act to amend part first, title third, chapter third of the revised statutes, and for other purposes, approved February sixteenth, sixteenth, eighteen hundred and forty two ;

An act to provide for the assessment and collection of taxes, approved February sixteenth, eighteen hundred and forty-two ;

An act to provide for the future election of members of congress in this state, approved February seventeenth, eighteen hundred and forty-two ;

An act to amend the revised statutes concerning the powers and duties of probate courts, approved February seventeenth, eighteen hundred and forty-two ;

An act to modify and alter the second and eighth sections of part

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first, title fifth, chapter sixth of the revised statutes, approved February seventeenth, eighteen hundred and forty-two;

An act to repeal a part of chapter eighth, title fifth, part first of the revised statutes, approved February seventeenth, eighteen hundred and forty-two;

An act amendatory of the statutes relating to the partition of real estate, approved February seventeenth, eighteen hundred and forty-two;

An act to amend title seven, of part second, chapter second, section six of the revised statutes, entitled "Of divorce," approved February seventeenth, eighteen hundred and forty-two;

An act to amend chapter one, of title four, of part third of the revised statutes, entitled "Of proceedings against debtors by attachment," approved February seventeenth, eighteen hundred and forty-two;

An act authorizing the agent of the state prison to lease for a term of years the labor of the convicts in the state prison, approved February seventeenth, eighteen hundred and forty-two;

An act in relation to certain actions of ejectment, approved February seventeenth, eighteen hundred and forty-two;

An act to amend an act entitled "an act to prescribe the powers and duties of justices of the peace in civil proceedings, approved April ninth, eighteen hundred and forty-one," approved February seventeenth, eighteen hundred and forty-two;

An act to provide for the transfer of real estate on executions, and for other purposes, approved February seventeenth, eighteen hundred and forty-two;

Joint resolution relative to furnishing states with certain documents, approved February sixteenth, eighteen hundred and forty-two;

An act to amend an act entitled "an act relating to the conveyance of real estate," approved January nineteenth, eighteen hundred and forty-three;

An act to amend section twenty-six, chapter second, title seventh, part second of the revised statutes, relative to divorce, approved January twenty-fourth, eighteen hundred and forty-three;

An act in relation to the fire department and firemen of the incorporated cities or villages of this state, approved February sixth, eighteen hundred and forty-three;

An act to amend section seventeen, chapter one, title three of part second of the revised statutes; and also, section thirty-five, chapter one, title four, part first of the revised statutes, in relation to vacancies in town offices, approved February seventh, eighteen hundred and forty-three;

An act to amend an act entitled "an act to exempt certain property from execution or sale for any debt, damages, fine or amercement, approved February sixteenth, eighteen hundred and forty-two;" approved February tenth, eighteen hundred and forty-three;

An act to provide for the disposition of prisoners in certain cases therein mentioned, approved February fourteenth, eighteen hundred and forty-three;

An act to prevent the embezzlement and concealment of property of deceased persons, approved February twenty-two, eighteen hundred and forty-three;

An act for the relief of the bail of prisoners on the jail limits, approved March six, eighteen hundred and forty-three;

An act to amend chapter second, title eight, part first of the revised statutes, relative to medical societies, approved March six, eighteen hundred and forty-three; TITLE XXXIII.
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An act to organize a land office, and to regulate the sale of the public lands, approved March six, eighteen hundred and forty-three;

An act to amend part first, title seven, chapter six of the revised statutes, relative to the interest of money, approved March six, eighteen hundred and forty-three;

An act to provide for the assessment and collection of taxes, approved March eight, eighteen hundred and forty-three;

An act relative to common or primary schools, approved March eight, eighteen hundred and forty-three;

An act to prevent the action of ejectment in certain cases, approved March eight, eighteen hundred and forty-three;

An act to amend an act relative to the costs of prosecution in criminal cases, approved March eight, eighteen hundred and forty-three;

An act to establish district courts in the counties of Wayne, Oakland, Washtenaw and Jackson, and to repeal an act entitled "an act to establish a district court within the county of Wayne," approved March nine, eighteen hundred and forty-three;

An act to define the power of the supreme court relative to mandamus, approved March eight, eighteen hundred and forty-three;

An act making the record of conviction filed in the state prison office, evidence in certain cases, approved March eight, eighteen hundred and forty-three;

An act to reduce the salary of the superintendent of public instruction, approved March eight, eighteen hundred and forty-three;

An act to provide for the transfer of real estate on execution, and on mortgage sales, approved March eight, eighteen hundred and forty-three;

An act to provide for the issuing and return of venire, the payment of jurors, the appointment of circuit court commissioners, and for other purposes, approved March nine, eighteen hundred and forty-three;

An act to provide for the equitable settlement of the estates of deceased persons, approved March eight, eighteen hundred and forty-three;

An act to amend an act entitled "an act concerning the supreme court," approved March nine, eighteen hundred and forty-three;

An act to amend "an act to provide for the voluntary dissolution of corporations, and to prescribe the duties of receivers in chancery in certain cases, and for other purposes, approved April fifteen, eighteen hundred and thirty-nine;" approved March nine, eighteen hundred and forty-three;

An act relative to crimes, and the punishment thereof, approved March nine, eighteen hundred and forty-three;

An act relative to slander, approved January twenty-six, eighteen hundred and forty-four;

An act to punish persons criminally who are guilty of seduction and adultery, and for other purposes, approved February five, eighteen hundred and forty-four;

An act to provide for the payment of entry and jurors' fees, approved February fourteen, eighteen hundred and forty-four;

An act to amend an act entitled "an act to provide for the issuing

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and return of venires, the payment of jurors, the appointment of circuit court commissioners, and for other purposes, approved March nine, eighteen hundred and forty-three;" approved February twenty, eighteen hundred and forty-four;

An act to provide for the punishment of bribery and corruption in certain cases, approved February twenty, eighteen hundred and forty-four;

An act supplementary to an act entitled "an act to amend an act entitled an act to provide for the issuing and return of venires, the payment of jurors, the appointment of circuit court commissioners, and for other purposes, approved February twenty, eighteen hundred and forty-four;" approved February twenty-eight, eighteen hundred and forty-four;

An act to provide for the publication of the decisions of the supreme court and court of chancery, approved February twenty-nine, eighteen hundred and forty-four;

An act for the reorganization of the trustees of certain societies of the methodist episcopal church, approved March two, eighteen hundred and forty-four;

An act to amend an act entitled "an act to provide for the collection of demands against boats and vessels, approved April ten, eighteen hundred and thirty-nine;" approved March five, eighteen hundred and forty-four;

An act to amend an act entitled "an act to require an annual settlement with the state of certain state officers and agents, and for other purposes, approved February four, eighteen hundred and forty-two;" approved March seven, eighteen hundred and forty-four;

An act to provide for the foreclosure of mortgages, approved March nine, eighteen hundred and forty-four;

An act to punish certain officers for taking or receiving unlawful fees, and for other purposes, approved March nine, eighteen hundred and forty-four;

An act to amend chapter three, title one, part three of the revised statutes, and for other purposes, approved March nine, eighteen hundred and forty-four;

An act to amend section three of an act entitled "an act to repeal a part of chapter eight, title fifth, part first of the revised statutes, and for other purposes, approved February seventeen, eighteen hundred and forty-two;" approved March nine, eighteen hundred and forty-four;

An act relative to the duties of assessors and highway commissioners, approved March eleven, eighteen hundred and forty-four;

An act to facilitate the study of anatomy, and to repeal chapter two, part one, title eight of the revised statutes, relating to medical societies, approved March nine, eighteen hundred and forty-four;

An act to amend section six, chapter two, title seven, part second of the revised statutes, approved March nine, eighteen hundred and forty-four;

An act to amend an act entitled "an act to abolish the office of county commissioner, and for other purposes, approved February ten, eighteen hundred and forty-two;" approved March nine, eighteen hundred and forty-four;

An act to amend "an act in relation to fire departments and firemen of the incorporated cities and villages of this state," approved March nine, eighteen hundred and forty-four;

An act to amend an act entitled "an act relative to the auditor general and state treasurer and the offices of both, approved April one, eighteen hundred and forty;" approved March eleven, eighteen hundred and forty-four;

An act to define and protect the rights of married women, approved March eleven, eighteen hundred and forty-four;

An act to establish a land office, to prescribe and regulate the disposition of the public lands, and for other purposes, approved March eleven, eighteen hundred and forty-four;

An act authorizing marks and brands for horses, cattle, sheep and swine, approved March eleven, eighteen hundred and forty-four;

An act to amend the several acts to organize the militia of this state, approved March eleven, eighteen hundred and forty-four;

An act authorizing executors and administrators to convey lands in certain cases under the direction of the courts of probate, and to permit sales of real estate at less than the full appraised value in certain cases, approved March eleven, eighteen hundred and forty-four;

An act to provide more effectually for the collection and disposition of fines, penalties and forfeited recognizances, approved March twelve, eighteen hundred and forty-four;

An act to establish a board of auditors for Wayne county, and for other purposes, approved March eleven, eighteen hundred and forty-four;

An act to define the duties of the auditor general in relation to rejected taxes and for other purposes, approved March twelve, eighteen hundred and forty-four;

An act to punish officers, clerks, agents and servants of incorporated bodies, for certain frauds in office, approved March twelve, eighteen hundred and forty-four;

An act to amend an act entitled "an act to provide for the assessment and collection of taxes, approved March eight, eighteen hundred and forty-three;" approved March eleven, eighteen hundred and forty-four;

An act to change the terms of the court of chancery for the first circuit, approved February three, eighteen hundred and forty-five;

An act to amend an act entitled "an act for the destruction of wolves," approved February twenty, eighteen hundred and forty-five;

An act to amend the law in relation to crimes, approved March one, eighteen hundred and forty-five;

An act to provide for the service of process upon the agents of corporations in certain cases, approved March nineteen, eighteen hundred and forty-five;

An act to amend an act entitled "an act to establish a board of county auditors for Wayne county, and for other purposes, approved March eleven, eighteen hundred and forty-four;" approved March nineteen, eighteen hundred and forty-five;

An act to authorize the boards of supervisors of the respective counties to raise by tax a sufficient sum to erect county buildings, approved March nineteen, eighteen hundred and forty-five;

An act to modify the license law, approved March nineteen, eighteen hundred and forty-five;

An act to authorize the appointment of commissioners to take acknowledgment of deeds and instruments of writing under seal out of the state, approved March nineteen, eighteen hundred and forty-five;

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An act to amend chapter three, title three, part first of the revised statutes, relative to the duty of county surveyors, approved March nineteen, eighteen hundred and forty-five ;

An act to amend chapter four, title one, part three of the revised statutes, approved March nineteen, eighteen hundred and forty-five ;

An act relative to the militia, approved March nineteen, eighteen hundred and forty-five ;

An act to provide for the sale of lands bid in by the state for delinquent taxes, and for other purposes, approved March twenty, eighteen hundred and forty-five ;

An act to provide for the reassessment of taxes rejected by the auditor general, and for other purposes, approved March twenty-two, eighteen hundred and forty-five ;

An act to amend "an act relative to common or primary schools, approved March eight, eighteen hundred and forty-three ;" approved March eight, eighteen hundred and forty-five ;

An act to amend an act entitled "an act to prescribe the powers and duties of justices of the peace in civil proceedings, approved April nine, eighteen hundred and forty-one ;" approved March twenty-four, eighteen hundred and forty-five ;

An act to provide against trespasses upon the towing path of canals, approved March twenty-four, eighteen hundred and forty-five ;

An act to amend the second clause of section three, chapter one, title five, part three of the revised statutes, relative to costs, approved March twenty-four, eighteen hundred and forty-five ;

An act to amend an act entitled "an act to provide for the publication of the decisions of the supreme court and the court of chancery, approved February twenty-nine, eighteen hundred and forty-four ;" approved March twenty-four, eighteen hundred and forty-five ;

An act to provide for the sale of the salt spring lands belonging to the state, approved March twenty-four, eighteen hundred and forty-five ;

An act to amend part first, title four, chapter one of the revised statutes, approved March twenty-four, eighteen hundred and forty-five ;

An act to amend an act entitled "an act to prescribe the powers and duties of justices of the peace in civil proceedings, and for other purposes," approved March twenty-four, eighteen hundred and forty-five ;

An act in relation to the duties of circuit court commissioners, approved March twenty-four, eighteen hundred and forty-five ;

An act in relation to taxing banks, approved March twenty-four, eighteen hundred and forty-five ;

An act to provide for the payment of interest on certain monies belonging to the primary school fund and to increase the state tax, approved March twenty-four, eighteen hundred and forty-five ;

An act to amend "an act to establish a land office, to prescribe and regulate the disposition of the public lands and for other purposes, approved March eleven, eighteen hundred and forty-four ;" approved March twenty-four, eighteen hundred and forty-five ;

An act to provide for the sale of certain unsold state tax lands and for other purposes, approved February seventeen, eighteen hundred and forty-six ;

An act to amend "an act to provide for the sale of certain unsold state tax lands and for other purposes, approved February seventeen,

eighteen hundred and forty-six;" approved April twenty-third, eighteen hundred and forty-six ;

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An act relative to warehouseing and forwarding, approved April twenty-nine, eighteen hundred and forty-six ;

An act to amend an act entitled "an act to provide for proceedings in chancery against corporations and for other purposes, approved June twenty-one, eighteen hundred and thirty-seven;" approved May seven, eighteen hundred and forty-six ;

An act to amend an act approved March nine, eighteen hundred and forty-three, entitled "an act to amend an act to provide for the voluntary dissolution of corporations and to prescribe the duties of receivers in chancery in certain cases, and for other purposes, approved April fifteen, eighteen hundred and thirty-nine;" approved May eleven, eighteen hundred and forty-six ;

An act amendatory of the several acts touching licenses, approved May twelve, eighteen hundred and forty-six ;

An act to provide for the taxation of dogs and for other purposes, approved May twelve, eighteen hundred and forty-six ;

An act to amend an act entitled "an act relative to common or primary schools," approved May thirteen, eighteen hundred and forty-six ;

And all other acts and parts of acts, the subjects whereof are revised and re-enacted in these revised statutes, or which are repugnant to the provisions therein contained.

SEC. 2. The repeal of the acts mentioned in the preceding section, shall not affect any act done or right accrued or established, or any proceeding, suit or prosecution had or commenced in any civil case previous to the time when such repeal shall take effect ; but every such act, right and proceeding, shall remain as valid and effectual as if the provision so repealed had remained in force.

Saving clause as to acts done, rights accrued, &c.

SEC. 3. No offence committed, and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal ; except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of these revised statutes, such provisions shall apply to and control any judgment to be pronounced after the said statutes shall take effect, for any offence committed before that time.

Ib., as to offences committed or penalties incurred.

SEC. 4. No prosecution for any offence, or the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal ; but the same shall proceed in all respects, as if such provision had not been repealed, except that all such proceedings had after the time when the said revised statutes shall take effect, shall be conducted according to the provisions of the said statutes, and shall be in all respects subject to the said provisions.

Ib., as to prosecutions for offences or penalties.

SEC. 5. All statutes and parts of statutes which were repealed or abrogated by, or were repugnant to, any law hereby repealed, and which are not re-enacted and consolidated in these revised statutes, shall continue to be so repealed, and shall be deemed abrogated.

Statutes heretofore repealed, to continue so repealed.

SEC. 6. The repeal by this chapter, of any statute or part of a statute heretofore repealed, shall not be construed as a declaration or implication that such statute or part of a statute has been in force at any time subsequent to such first repeal.

Repeal by this chapter, how to be construed.

SEC. 7. The repeal by this chapter of any statutory provision,

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Appointments
under acts re-
pealed, not to be
affected.
9 Wend., 58.

Provisions as to
offices abolished
by such repeal.

which is consolidated and re-enacted in the revised statutes, by virtue of which any appointment shall have been made, or any office is or shall be held, shall not be construed to vacate such office, or in any way affect such appointment; but the said appointment shall continue, and the said offices shall be held subject to the provisions of law in force after the repeal of such statutory provision.

SEC. 8. But when any office is abolished by the repeal of any act, and such act is not consolidated and re-enacted in the revised statutes, such office shall cease at the time such repeal shall take effect.

ISAAC E. CRARY,

Speaker of the House of Representatives.

WM. L. GREENLY,

President of the Senate.

Approved May 18th, 1846.

ALPHEUS FELCH.

APPENDIX.

AN ORDINANCE

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES,
NORTHWEST OF THE RIVER OHIO.

In Congress, July 13, 1787.

1. Be it ordained by the United States, in congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient. Bloren & Duane's ed. Laws U. S., v. 1. p. 475.

2. Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand child, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws, as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, such conveyances be acknowledged, or the execution thereof be duly proved, and recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property. Rules of inheritance; personal property.

3. Be it ordained by the authority aforesaid, That there shall be

Governor.

appointed from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary; supreme court.

4. There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months, to the secretary of congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall be in force during good behavior.

Adoption and publication of laws.

5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Officers of militia.

6. The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Civil officers.

7. Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Civil divisions of the district.

8. For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district; and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Representative government; general assembly.

9. So soon as there shall be five thousand free male inhabitants of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with

the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which, the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided, also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

12. The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office, the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a

Term of service;
vacancies, how
filled.

Constitution of
the legislative
power; vacan-
cies how filled;
governor's assent
to bills.

Oath of office;
delegate to con-
gress.

right of debating, but not of voting, during this temporary government.

13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest :

Articles of compact.

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit :

ARTICLE I.

Religious worship.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II.

The writ of habeas corpus; bail; fines; compensation for property taken for public service; laws not to affect private contracts.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ARTICLE III.

Education; Indians.

Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorized by congress; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the states which may be formed therein,

shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of these districts or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

States to remain part of confederacy; debts and expenses of government; navigable waters.

ARTICLE V.

There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: the western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash, and Post Vincents, due north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states in all respects whatever; and shall be at liberty to form a permanent constitution and state government; provided, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interests of the confederacy,

States how to be formed in the territory; boundary of western state; middle state; eastern state; when admitted into the Union; proviso.

such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI.

Slavery prohibited; proviso.

There shall neither be slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crime, whereof the party shall have been duly convicted; provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully re-claimed and conveyed to the person claiming his or her labor or service, as aforesaid.

Resolutions repealed.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be and the same are hereby repealed and declared null and void.

AN ACT

TO PROVIDE FOR THE GOVERNMENT OF THE TERRITORY NORTH WEST OF THE RIVER OHIO.

In Congress, August 7, 1789.

1 Story's laws of U. S., p. 32, ch. 8, [*See act of 1800, ch. 41, act of 1802, ch. 40, act of 1804, ch. 80.]

Whereas, in order that the ordinance* of the United States in congress assembled for the government of the territory north-west of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States :

Governor to make communications to president of the United States.

SECTION 1. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That in all cases in which by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information, and to make such communication to the president of the United States; and the president shall nominate, and by and with the advice and consent of the senate, shall appoint all officers which, by the said ordinance, were to have been appointed by the United States in congress assembled; and all officers, so appointed, shall be commissioned by him; and, in all cases where the United States in congress assembled, might by the said ordinance, revoke any commission, or remove from any office, the president is hereby declared to have the same powers of revocation and removal.

President and senate to appoint territorial officers.

President to commission and remove.

In case of death, removal, &c. the secretary to execute the powers of governor during the vacancy.

SEC. 2. And be it further enacted, That in case of the death, removal, resignation or necessary absence of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said governor.

AN ACT

RESPECTING THE GOVERNMENT OF THE TERRITORIES OF THE UNITED STATES, NORTH-WEST AND SOUTH OF THE RIVER OHIO.

In Congress, May 8, 1792.

SECTION 1. Be it enacted, &c., That the laws of the territory north-west of the Ohio, that have been, or hereafter may be, enacted by the governor and judges thereof, shall be printed, under the direction of the secretary of state, and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said governor and judges, to be distributed among the inhabitants for their information, and that a like number of the laws of the United States shall be delivered to the governor and judges of the territory south-west of the river Ohio.

1 Story's laws U. S., p. 266, ch. 42. Laws of the territory northwest of the river Ohio to be printed, &c. 200 copies and 10 sets of the laws of the United States to be delivered, &c.

SEC. 2. That the governor and judges of the territory north-west of the river Ohio, shall be, and hereby are, authorized to repeal their laws, by them made, whensoever the same may be found to be improper.

Governor and judges of the territory northwest of the Ohio authorized to repeal their laws, &c.

SEC. 3. That the official duties of the secretaries of the said territories, shall be under the control of such laws as are, or may be in force in the said territories.

Official duties of secretaries, under the control of territorial laws.

SEC. 4. That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be, and hereby is authorized to hold a court.

One supreme or superior judge may hold court in the absence of the others.

SEC. 5. That the secretary of state provide proper seals for the several and respective public offices in the said territories.

The secretary of state to provide seals for the territorial offices.

SEC. 6. That the limitation act, passed by the governor and judges of the said territory, the twenty-eighth day of December, one thousand seven hundred and eighty-eight, be, and hereby is disapproved.

The limitation act passed by the governor and judges disapproved.

[The seventh section of the above act contains only a special provision.]

AN ACT

TO DIVIDE THE INDIANA TERRITORY INTO TWO SEPARATE GOVERNMENTS.

In Congress, January 11, 1805.

SECTION 1. Be it enacted, &c., That from and after the thirtieth day of June next, all that part of the Indiana territory which lies north of a line drawn east from the southerly bend or extreme of lake Michigan, until it shall intersect lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate territory and be called Michigan.

2 Story's laws U. S., p. 957, ch. 66. That part of Indiana herein described, to constitute a separate territory, and be called Michigan.

SEC. 2. That there shall be established within the said territory, a government in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States northwest of the river Ohio, and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory

A government to be established similar to that provided by the ordinance and act referred to, &c. Act of 1789, ch. 8.

The inhabitants to be entitled to rights secured by ordinance.

The officers for the territory, &c. to exercise the same powers, perform the same duties, &c. as provided, &c. Duties and emoluments of superintendent, &c. united, &c.

Nothing in this act to affect the government of Indiana, further than to prohibit, &c.

Suits, &c., pending in the court of any county, &c. or removed from any county, &c. to be proceeded on, and judgments, &c., rendered, as if Indiana had remained undivided.

Detroit to be the seat of government, until, &c.

north west of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy, all and singular the rights, privileges and advantages, granted and secured to the people of the territory of the United States north west of the river Ohio, by the said ordinance.

SEC. 3. That the officers for the said territory, who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory; and the duties and emoluments of superintendent of Indian affairs shall be united with those of governor.

SEC. 4. That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the said territory of Michigan, from and after the aforesaid thirtieth day of June next.

SEC. 5. That all suits, process and proceedings, which, on the thirtieth day of June next, shall be pending in the court of any county, which shall be included within the said territory of Michigan; and also, all suits, process, and proceedings, which, on the said thirtieth day of June next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

SEC. 6. That Detroit shall be the seat of government of the said territory, until congress shall otherwise direct.

AN ACT

TO ESTABLISH THE NORTHERN BOUNDARY LINE OF THE STATE OF OHIO, AND TO PROVIDE FOR THE ADMISSION OF THE STATE OF MICHIGAN INTO THE UNION, UPON THE CONDITIONS THEREIN EXPRESSED.

In Congress, June 15, 1836.

Northern boundary line of Ohio established.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the northern boundary line of the state of Ohio shall be established at, and shall be a direct line drawn from the southern extremity of Lake Michigan to the most northerly cape of the Maumee (Miami) bay, after that line so drawn shall intersect the eastern boundary line of the state of Indiana, and from the said north cape of the said bay, north-east to the boundary line between the United States and the province of Upper Canada, in Lake Erie; and thence, with the said last mentioned line to its intersection with the western line of the state of Pennsylvania.

SEC. 2. And be it further enacted, That the constitution and state

government which the people of Michigan have formed for themselves be, and the same is hereby, accepted, ratified and confirmed, and that the said state of Michigan shall be, and is hereby declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original states, in all respects whatever: Provided always, and this admission is upon the express condition, That the said state shall consist of, and have jurisdiction over all the territory included within the following boundaries, and over none other, to wit: Beginning at the point where the above described northern boundary of the state of Ohio, intersects the eastern boundary of the state of Indiana, and running thence with the said boundary line of Ohio, as described in the first section of this act, until it intersects the boundary line between the United States and Canada, in Lake Erie; thence with the said boundary line between the United States and Canada, through the Detroit river, Lake Huron and Lake Superior to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river; thence through the middle of the main channel of the said river Montreal, to the middle of the Lake of the Desert; thence in a direct line to the nearest head water of the Menomonie river; thence through the middle of that fork of the said river first touched by the said line, to the main channel of the said Menomonie river; thence down the centre of the main channel of the same to the centre of the most usual ship channel of the Green Bay of Lake Michigan; thence through the centre of the most usual ship channel of the said bay, to the middle of Lake Michigan; thence through the middle of Lake Michigan to the northern boundary of the state of Indiana, as that line was established by the act of congress of the nineteenth of April, eighteen hundred and sixteen; thence due east, with the north boundary line of the said state of Indiana, to the north-east corner thereof; and thence south, with the east boundary line of Indiana, to the place of beginning.

Constitution of Michigan ratified.

Proviso: conditions of admission into the Union.

Boundaries of Michigan.

SEC. 3. And be it further enacted, That as a compliance with the fundamental condition of admission contained in the last preceding section of this act, the boundaries of the said state of Michigan, as in that section described, declared and established, shall receive the assent of a convention of delegates elected by the people of said state, for the sole purpose of giving the assent herein required; and as soon as the assent herein required shall be given, the president of the United States shall announce the same by proclamation; and thereupon, and without any further proceeding on the part of congress, the admission of the said state into the Union, as one of the United States of America, on an equal footing with the original states in all respects whatever, shall be considered as complete, and the senators and representative who have been elected by the said state as its representatives in the congress of the United States, shall be entitled to take their seats in the senate and house of representatives respectively, without further delay.

Consent of Michigan required to boundaries above described

SEC. 4. And be it further enacted, That nothing in this act contained, or in the admission of the said state into the Union as one of the United States of America, upon an equal footing with the original states in all respects whatever, shall be so construed or understood as to confer upon the people, legislature or other authorities of the said state of Michigan, any authority or right to interfere with the sale by the United States, and under their authority, of the vacant and unsold

Public lands of U. S. in Michigan.

lands within the limits of the said state ; but that the subject of the public lands, and the interests which may be given to the said state therein, shall be regulated by future action between congress on the part of the United States, and the said state, or the authorities thereof; and the said state of Michigan shall in no case, and under no pretence whatsoever, impose any tax, assessment or imposition of any description, upon any of the lands of the United States within its limits.

AN ORDINANCE

RELATIVE TO CERTAIN PROPOSITIONS MADE BY THE CONGRESS OF THE UNITED STATES TO THE LEGISLATURE OF THE STATE OF MICHIGAN.

Preamble.
Laws of 1836,
p. 57.

Whereas, The congress of the United States did pass an act, approved the twenty-third day of June, one thousand eight hundred and thirty-six, making certain propositions for the acceptance or rejection of the legislature of the state of Michigan, which said act is herein inserted, in the the following words, to wit :

Act of congress
23rd June, 1836.

"An Act supplementary to an act entitled 'an act to establish the northern boundary line of the state of Ohio, and to provide for the admission of the state of Michigan into the Union on certain conditions, therein expressed.

Propositions of
the U. S.

SECTION 1. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That in lieu of the propositions submitted to the congress of the United States by an ordinance passed by the convention of delegates at Detroit, assembled for the purpose of making a constitution for the state of Michigan, which are hereby rejected, that the following propositions be, and the same are hereby offered to the legislature of the state of Michigan, for their acceptance or rejection, which, if accepted under the authority conferred on the said legislature by the convention which framed the constitution of the said state, shall be obligatory upon the United States.

School lands.

First, That section numbered sixteen in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of schools.

University lands.

Second, That the seventy-two sections of land set apart and reserved for the use and support of a university by an act of congress approved on the twentieth day of May, eighteen hundred and twenty-six, entitled "an act concerning a seminary of learning in the territory of Michigan," are hereby granted and conveyed to the state, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe ; And provided also, that nothing herein contained shall be so construed as to impair or affect in any way the rights of any person or persons claiming any of said seventy-two sections of land, under contract or grant from said university.

Proviso.

Lands for the
erection of public
buildings.

Third, That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said state, are hereby granted

to the state for the purpose of completing the public buildings of the said state, or for the erection of public buildings at the seat of government of the said state, as the legislature may determine and direct.

Fourth, That all salt springs within the state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said state for its use, the same to be selected by the legislature thereof, on or before the first of January, eighteen hundred and forty; and the same, when so selected, to be used on such terms, conditions and regulations, as the legislature of the said state shall direct; provided, that no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall by this section be granted to said state; and provided, also, that the general assembly shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of congress.

Salt springs, and lands contiguous.

Further proviso.

Fifth, That five per cent of the net proceeds of the sales of all public lands lying within the said state, which have been or shall be sold by congress, from and after the first day of July, eighteen hundred and thirty-six, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said state, as the legislature may direct; provided, that the five foregoing propositions herein offered, are on the condition that the legislature of the said state, by virtue of the powers conferred upon it by the convention which framed the constitution of the said state, shall provide by an ordinance, irrevocable without the consent of the United States, that the said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively." Therefore,

Five per cent. from the sale of public lands.

Proviso.

Of the sale of U. S. lands within the state.

Exemptions from taxation.

SECTION 1. Be it enacted by the senate and house of representatives of the state of Michigan, That the five propositions offered to the said legislature in the above recited act, be, and each and every of them are hereby accepted "under the authority conferred on said legislature by the convention which framed the constitution of said state," and for the purposes of complying with the conditions in the proviso to the fifth proposition contained in the above recited act, and by virtue of the powers conferred upon the said legislature of said state by the convention aforesaid, the following ordinance is declared to be irrevocable without the consent of the United States.

Acceptance of the propositions of the U. S.

Ordinance declared irrevocable without the consent of the U. S.

Be it ordained by the senate and house of representatives of the state of Michigan, That the said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no

The state will not interfere with sale of lands.

No taxes to be levied on lands of U. S.
Non-resident not taxed higher than resident lands.
Bounty lands exempted from taxation for three years.

New proposition submitted to congress.

Lands to be appropriated for roads and canals.

One section of land for each mile of certain proposed roads.

tax shall be imposed on land the property of the United States, and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township or any other purpose, for the term of three years from and after the date of the patents respectively.

And be it further ordained by the authority aforesaid, That the following propositions be submitted to the congress of the United States, which, if assented to by that body, shall be obligatory on this state. Not less than five hundred thousand acres of the unappropriated lands lying within said state, shall be designated under the direction of the legislature, and granted the state for the purposes of internal improvement; said land, or the proceeds of the sale thereof shall be appropriated to aid the state in constructing one or more railroads or canals across the peninsula, from Lake Erie or Detroit river to Lake Michigan, and also to aid in the construction of such other roads and canals, and the improvement of such rivers, as the legislature may designate.

That for the construction of a road from the mouth of Ontonagon river of Lake Superior, to the mouth of Menomonie river of Green Bay, or some river of Green Bay north of said Menomonie river, thence to the Sault St. Marie, to be located under the direction of the legislature, one section of land for each mile of said road shall be granted to said state, and all roads commenced by the United States and remaining unfinished in the state, shall be completed and put in repair at the expense of the United States.

Approved July 25, 1836.

ASSENT

OF THE STATE OF MICHIGAN, TO THE ACT OF CONGRESS OF JUNE FIFTEENTH, EIGHTEEN HUNDRED AND THIRTY-SIX, GIVEN IN CONVENTION AT ANN ARBOR, ON THE FIFTEENTH DAY OF DECEMBER, EIGHTEEN HUNDRED AND THIRTY-SIX.

Preamble.

Whereas, By an act of congress of June the fifteenth, one thousand eight hundred and thirty-six, the constitution and state government, which the people of Michigan have formed for themselves is accepted, ratified and confirmed: and whereas, the admission of the state of Michigan into the Union, as one of the United States, is provided by the said act to be upon the express condition, "that the said state shall consist of and have jurisdiction over all the territory included within the following boundaries, and over none other, to wit: beginning at the point where the described northern boundary of the state of Ohio intersects the eastern boundary of the state of Indiana, and running thence with the said boundary line of Ohio, as described in the first section of the said act, until it intersects the boundary line between the United States and Canada, in Lake Erie; thence with the said boundary line between the United States and Canada through the Detroit river, Lake Huron and Lake Superior, to a point where the

said line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river, thence through the middle of the main channel of the said Montreal river, to the middle of the Lake of the Desert; thence in a direct line to the nearest head water of the Menomonie river; thence through the middle of that fork of the said river first touched by the said line, to the main channel of the said Menomonie river; thence down the centre of the main channel of the same to the centre of the most usual ship channel of the Green Bay of Lake Michigan; thence through the centre of the most usual ship channel of the said bay, to the middle of Lake Michigan; thence through the middle of Lake Michigan to the northern boundary of the state of Indiana, as that line was established by the act of congress of the nineteenth of April, one thousand eight hundred and sixteen; thence due east with the north boundary line of the said state of Indiana to the north-east corner thereof, and thence south with the east boundary line of Indiana to the place of beginning." And whereas, as a compliance with the condition of admission described in the said act, it is provided and required in the said act, that the above described boundaries of the state of Michigan shall receive the assent of a convention of delegates, elected by the people of the said state for the sole purpose of giving such assent: and whereas, no authority or power is designated in said act of congress by which such convention of delegates shall be called or convened, but in the third section of said act the right of the people of Michigan to elect said delegates without any previous action of their constituted authorities, is clearly recognized and manifest: and whereas, this convention originated with, and speaks the voice of a great majority of the people of Michigan: and whereas, it is provided and enacted in the said act, that as soon as the assent therein required shall be given, the president of the United States shall announce the same by proclamation; and thereupon, and without any further proceedings on the part of congress, the admission of said state into the Union as one of the United States of America, on an equal footing with the original states in all respects whatever, shall be considered as complete:

Now, although this convention are of opinion that the congress of the United States had no constitutional right to require the assent aforesaid as a condition preliminary to the admission of the said state into the union, nevertheless, as the congress have required such assent to the said condition, and as the interest and prosperity of the state will be greatly advanced by an immediate admission into the union as one of its sovereignties, and the people of the said state are solicitous to give to her sister states and to the world, unequivocal proof of her desire to promote the tranquility and harmony of the confederacy, and to perpetuate the unity, liberty and prosperity of the country, Therefore, Be it resolved by the people of Michigan in convention assembled, That the assent required in the foregoing recited act of the congress of the United States is hereby given.

Assent.

This done in convention at Ann Arbor, this fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States of America the sixty-first.

APPENDIX.

AN ACT

TO ADMIT THE STATE OF MICHIGAN INTO THE UNION, UPON AN EQUAL FOOTING WITH THE ORIGINAL STATES.

In Congress, January 26, 1837.

Preamble.

Whereas, in pursuance of the act of congress of June the fifteenth, eighteen hundred and thirty-six, entitled "An act to establish the northern boundary of the state of Ohio, and to provide for the admission of the state of Michigan into the union upon the conditions therein expressed," a convention of delegates, elected by the people of the said state of Michigan, for the sole purpose of giving their assent to the boundaries of the said state of Michigan, as described, declared and established in and by the said act, did, on the fifteenth of December, eighteen hundred and thirty-six, assent to the provisions of said act, therefore :

Admission of Michigan into the Union.

SECTION 1. Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the state of Michigan shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

To be considered state in carrying into effect the act relative to deposits.

SEC. 2. And be it further enacted, That the secretary of the treasury, in carrying into effect the thirteenth and fourteenth sections of the act of the twenty-third of June, eighteen hundred and thirty-six, entitled "An act to regulate the deposits of the public money," shall consider the said state of Michigan as being one of the United States.

ABSTRACT

OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS. (a.)

Who may be admitted as citizens

SECTION 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise :

Form of declaration ; two years prior to admission, and before whom made.

SEC. 2. *First* : That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (b) two (c) years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. (d)

Certain persons exempted from preceding conditions.

SEC. 3. From this condition are exempted, any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day

(a) 6 Cranch 176; 2 Whea, 259; 4 Peters.

(b) Act May 26th, 1824, sec 3. Story, 1973, 393; 8 Cranch, 335; 7 Cranch, 420; 2 Galli. C.

(c) *Ibid.* sec. 4. C. Rep. 11; Peters' C. C. Rep. 457.

(d) Act of April 14th, 1802. Story 850.

of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same. (a)

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration, required in the second section, three years previous to his admission: but, such alien shall make the declaration required therein, at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization. (b)

Admission of minors who arrive in United States when not over 18 years of age,

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April 14, 1802,* may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (c)

When widow and children of deceased alien deemed citizens.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (d)

Oath upon admission.

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction that, during that, time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence. (e)

Proof of character and residence, before admission; and by whom to be made.

SEC. 8. In case the alien applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court; provided, that no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign with whom the United States

Alien to renounce hereditary title, record thereof; to be citizen of country at peace with United States.

* The second section of the act of April 14, 1802, required an alien when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by act of May 24, 1828. Story, 850, 2145.

(a) Act of March 26th, 1804, sec. 1. Story 942.

(b) Act of May 26th, 1824, sec. 1. Story, 1973.

(c) Act March 26th, 1804, sec. 2. Story, 942.

(d) Act 14th April, 1802, sec. 1. Story, 850.

(e) Act 14th April, 1802, sec. 1. Story, 850.

shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States (a).

As to aliens residing in the United States in 1812.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times, and in the manner prescribed by the laws heretofore passed on that subject; provided, that nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy, at any time previous to the actual naturalization of such alien. (b)

As to aliens residing in the United States between 1802 and 1812.

SEC. 10. Any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen; provided, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (c)

As to aliens residing in the United States between 1798 and 1802; what proof of residence required, and how set forth in record to render admission valid.

SEC. 11. Nothing in the foregoing section ten contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court,

(a) Act 14th April, 1802: sec. 1. Story, 850.

(b) Act of July 30, 1813. Story 1334.

(c) Act May 24, 1828. Story §145; and see Story 1354.

that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (a)

Sec. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States. And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. (b)

What children of aliens, &c. deemed citizens. Proscribed persons not to be admitted.

Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States. (c)

Sec. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed

As to aliens residing in the United States prior to 1795.

(a) Act 22d March, 1816, sec. 2. Story 1539.

(b) Campbell V. Gordon, 6 Cr. 176. Act 14th April, 1802, sec. 4. Story 850.

(c) Campbell V. Gordon, 6 Cr. 176. Story 850.

to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof. (*a*)

What state courts
may admit aliens.

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal or clerk or prothonotary, shall be considered as a district court, within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States. (*b*)

Five years resi-
dence required
before admission
of alien who ar-
rive in U. S. af-
ter 1815.

SEC. 15. No person who shall arrive in the United States, after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (*c*)

AN ACT

RESPECTING FUGITIVES FROM JUSTICE, AND PERSONS ESCAPING
FROM THE SERVICE OF THEIR MASTERS.

In Congress, February 12, 1793.

The executive of
any state or ter-
ritory may, on
application,
cause fugitives
from justice to
be arrested and
given up to the
proper authority.

SECTION 1. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That whenever the executive authority of any state in the Union, or either of the territories north west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory, to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic, by the governor or chief magistrate of the state or territory from whence the person so charged, fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent, when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

(*a*) Act April 14th, 1802, sec. 1. Story, 850.

(*b*) Act April 14th, 1802, sec. 8.

(*c*) Act March 3d, 1813, sec. 12. Story, 1304.

SEC. 2. And be it further enacted, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent, while transporting, as aforesaid, the person or persons so offending, shall, on conviction thereof, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Agents appointed to receive fugitives into custody may transport the same.

SEC. 3. And be it further enacted, That when a person, held to labor in any of the United States, or in either of the territories on the north west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made; and, upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the state or territory from which he or she fled.

Fugitives from labor or service may be apprehended in the state or territory to which they may have fled.

SEC. 4. And be it further enacted, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by, and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labor or service, his right of action for, or on account of the said injuries, or either of them.

Persons hindering or obstructing the apprehension of fugitives from labor to be fined.

AN ACT

TO PRESCRIBE THE MODE IN WHICH THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS IN EACH STATE SHALL BE AUTHENTICATED, SO AS TO TAKE EFFECT IN EVERY OTHER STATE.

In Congress, May 26, 1790.

SECTION 1. Be it enacted, &c., That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: that the records and judicial proceedings of the courts of any state shall be proved or admitted, in any other court within the United States, by the attestation of the clerk,

Legislative acts authenticated by state seal. Judicial proceedings by clerk, seal, and certificate of judge.

Faith and credit
in courts within
the United States.

and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are, or shall be taken.

AN ACT

SUPPLEMENTARY TO THE ACT ENTITLED "AN ACT TO PRESCRIBE THE MODE IN WHICH THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS, IN EACH STATE, SHALL BE AUTHENTICATED, SO AS TO TAKE EFFECT IN EVERY OTHER STATE."

In Congress, March 27, 1804.

Records and ex-
emplifications of
office books, kept
in any public of-
fice, seal, certifi-
cate, &c.

SECTION 1. Be it enacted, &c., That, from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved, or admitted, in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor, or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have, by law or usage, in the courts or offices of the state from whence the same are, or shall be taken.

Records, &c. to
have faith and
credit given to
them, &c.

The provisions
of this act, &c.
to apply to the
public acts, &c.
of the states, &c.

SEC. 2. That all the provisions of this act, and the act to which this is a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states.

AN ACT

TO PROVIDE FOR THE PUBLICATION OF THE REVISED STATUTES.

SECTION 1. Be it enacted by the senate and house of representatives of the state of Michigan, That the governor be, and he is hereby authorized and required to appoint a commissioner to superintend the printing and binding of the act passed at the present session of the legislature, entitled "an act for revising and consolidating the general statutes of the state of Michigan."

Governor to appoint commissioner.

Sec. 2. The said act shall be known and distinguished as the Revised Statutes; and it shall be the duty of the said commissioner, personally, to superintend the publication thereof, to examine the proof sheets, compare the same with the act in the office of the secretary of state, prepare marginal notes to the sections, and an exact and copious index to the whole.

Duty of commissioner.

Sec. 3. The said commissioner shall procure six thousand copies of the said revised statutes, and the matter specified in the next succeeding section, to be printed and bound in as good a style as that of the Massachusetts revised statutes, published in the year eighteen hundred and thirty-six, and in as good and substantial a manner, and at a price not exceeding one dollar and twenty-five cents per copy for printing and binding, including all materials except paper; two thousand copies thereof to be completed and deposited in the office of the secretary of state by the fifteenth day of December next, and the remaining four thousand copies by the first day of April next.

Number of copies of statutes.

Sec. 4. The said commissioner shall cause to be published with the said revised statutes, the declaration of independence, the constitution of the United States and the amendments thereto, the ordinance of seventeen hundred and eighty-seven, the act of congress providing for the admission of Michigan into the Union, and the acts supplementary thereto of June 26, 1836, and of January 27, 1837, and the resolve of the convention of the people of this state, accepting the terms of admission into the Union, abstracts of the laws of congress relative to the naturalization of aliens, to fugitives from justice, and the authentication of the statutes and records of the several states, together with the constitution of this state and the schedule and amendments thereto.

What to be published with statutes.

Sec. 5. The commissioner appointed under this act shall be entitled to receive such sum as the auditor general may audit and allow, not exceeding three dollars per day for the time actually employed by said commissioner, and such further expenses as in his opinion may be necessary for clerk hire, assistance in examining proofs, and for stationery.

Compensation.

Approved May 18, 1846.

LIST OF ACTS NOT REPEALED AND CONSOLIDATED
IN THE REVISED STATUTES.

The following entitled general statutes, not having been repealed and consolidated in the revised statutes, are deemed of sufficient importance to be herein referred to, viz:

An act for the preservation of railroads and other works belonging to the state, approved December 30, 1837 ;

An act requiring certain returns to be made from incorporated academies and other literary institutions, approved March 4, 1839 ;

An act to provide for the recording of town plats, and for vacating the same in certain cases, approved April 19, 1839 ;

An act for the regulation of internal improvement, approved March 25, 1840 ;

An act to provide for the publication of a map of the state of Michigan, and of the several counties therein, approved March 28, 1840 ;

An act to amend an act entitled "an act for the regulation of internal improvement," approved March 25, 1840, and to provide for the settlement of claims, approved February 17, 1842 ;

An act for the better security of the titles of lands belonging to the state, approved February 2, 1843 ;

An act in relation to the state printing, approved February 6, 1843 ;

An act to amend an act entitled "an act for the regulation of internal improvement, passed March twenty-fifth, eighteen hundred and forty," approved February 21, 1843 ;

An act to amend an act entitled "an act to repeal the acts consolidated in the revised statutes," approved March 6, 1843 ;

An act for the encouragement of agriculture, approved, March 2, 1844 ;

An act explanatory of section forty-one, chapter four, title six, part first, of the revised statutes, approved February 17, 1846 ;

An act to provide for the determination of claims against the state, for injuries to animals and other property occasioned by the running of cars and locomotives upon the central and southern railroads, approved April 13, 1846 ;

An act declaratory of the interests of the state of Michigan in mines and minerals, approved April 25, 1846 ;

An act to provide for organizing an active militia and for other purposes, approved May 18, 1846 ;

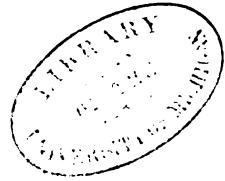
An act to regulate private associations and partnerships, approved May 18, 1846 ;

An act to amend an act entitled "an act in relation to the state printing, approved February 6, 1843," approved May 18, 1846 ;

An act concerning the estate of intestates escheated to this state, approved May 18, 1846 ;

An act to provide for the leasing of certain lands, approved May 18, 1846.

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ERRATA.

- Page 11, 5th line from bottom. read *a* before *party*.
" 16, art. 12, sec. 1, line 12, for "list," read *lists*; and in
sec. 2, line 5, for "the," read *that*.
" 20, sec. 10, line 2, for "similar," read *smaller*.
" 78, sec. 110, last line, before "same," read *the*.
" 79, sec. 114, line 6, after "executor," read *or*.
" 94, sec. 93, line 6, for "uo," read *on*.
" 99, sec. 13, line 7, for "partion," read *partition*.
" 104, sec. 15, line 1, after "on," read *the*.
" 200, sec. 3, line 9, for "ke," read *be*.
" 221, sec. 22, line 4, for "five," read *four*.
" 371, sec. 140, line 3, for "witing," read *writing*.
" 385, sec. 41, line 4, for "or," read *on*.
" 459, sec. 77, line 1, for "stautes," read *statutes*.
" 486, sec. 45, line 3, for "supersedas," read *supersedes*.
" 706, sec. 12, line 2, for "cuasualty," read *casualty*.



